

Exhibit 2

Crook County

12/15/2021

Planning Dept.

Powell East Solar Farm LLC Wildlife Mitigation Plan

Submitted to

Crook County Planning Department

By

Powell East Solar Farm LLC

September 22, 2021

INTRODUCTION

Plan Purpose and Goals

The purpose of this Wildlife Mitigation Plan (WMP) is to provide clear methods to minimize impacts on wildlife and their habitats, to the extent required by law. The goals of the mitigation measures are to:

1. Avoid or minimize impacts on habitat and native wildlife during construction and operation of the Project;
2. Specifically avoid potential impacts on special-status plant and wildlife species from construction and operation of the Project; and
3. For unavoidable impacts, develop a comprehensive mitigation approach in coordination with the Oregon Department of Fish and Wildlife (ODFW) and the United States Fish and Wildlife Service (USFWS).

Powell East Solar Farm LLC (the Applicant) and its contractors will be responsible for implementing the measures described in this WMP¹. This WMP is applicable to the preconstruction, construction, operations, and future decommissioning phases of the Project.

EXECUTIVE SUMMARY

The Applicant has engaged in a lengthy consultation with ODFW and is proposing three mitigation options. These mitigation options are based on recommendations by ODFW for this and other similar projects, and the mitigation options are well within the range of mitigation approaches that ODFW has historically recommended in the region and, specifically, in Crook County.

Notwithstanding professional differences of opinion between ODFW and the Applicant's wildlife biologist regarding the habitat quality at the site, the Applicant is proposing mitigation to achieve the mitigation standards that would apply, assuming that ODFW were correct in its assessment of the habitat quality at the site (which the Applicant does not concede)². The Applicant is taking this approach to move this Project forward and to minimize any outstanding disputes during the Crook County planning process. The Applicant is proposing to mitigate to meet ODFW's goal of "no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality" within mapped big game winter range. This mitigation approach is well within an appropriate range and is consistent with approaches recently approved by the Crook County Planning Commission for other solar facility applications, as well as approaches historically endorsed by ODFW in Crook County and throughout the state.

Commented [JGS*01]: 1.ODFW has consulted with NewSun on multiple projects in Crook County and has engaged in lengthy consultations on those prior projects (West Prineville, Crook Flat and TSR North). Consultation on Powell East has been comprised of one web based discussion related to the multiple projects, an e-mail discussion (March 11, 2021), and a follow up phone call.

Commented [JGS*02]: 2.Option 2 (Payment to Provide) is the only mitigation option that ODFW has recommended in the region.

Commented [JGS*03]: 3.ODFW would like to see any current or recent information that the applicant would like to provide (2)

¹ In the event a payment-to-provide option is chosen (Option 2 described below), the Crook County Soil and Water Conservation District (SWCD) or other organization will be responsible for implementing the mitigation.

² Applicant is continuing to analyze whether the anticipated impact of the project on wildlife would be significant.

DISCUSSION

Overview of Mitigation Proposal

The Applicant has developed this mitigation proposal through extensive consultation with ODFW. Despite that consultation, professional differences of opinion remain regarding the quality of big game habitat at the site. The Applicant's wildlife biologist concluded that "Based on the conditions of the study area observed during the site visit and analysis following the Fish and Wildlife Habitat Mitigation Policy flowchart, PBS concludes that the study area would be classified as "Habitat Category 3" for big game. "Habitat Category 3" is defined as *important* (emphasis added) habitat for fish and wildlife that is limited either on a physiographic province or site-specific basis, depending on the individual species or population (State of Oregon 2020)."

ODFW considers all of the site "Category 2" habitat, based on its location within an area mapped as big game winter range on ODFW's maps. Category 2 habitat is defined as *essential* (emphasis added) habitat for a fish or wildlife species, population, or unique assemblage of species and is limited either on a physiographic province or site-specific basis depending on the individual species, population or unique assemblage.

Despite those remaining points of disagreement, the Applicant is proposing mitigation to achieve the mitigation standards that would apply, assuming that ODFW were correct in its assessment of the habitat quality at the site (which the Applicant does not concede). The Applicant proposes to mitigate for impacts to big game wildlife on the site that ODFW considers to be "Category 2" at a mitigation standard of "no net loss and a benefit."

The Applicant proposes to implement measures to avoid and minimize impacts to habitat, as well as compensatory mitigation for habitat impacts resulting from the Project. Those measures are discussed in greater detail below. In summary, as compensatory mitigation, the Applicant is proposing three options designed to achieve the agreed-upon mitigation standards.

- **Option 1 (Conservation of Like Habitat with Juniper Removal Uplift)** will achieve the agreed-upon mitigation standards of "no net loss and a benefit" by applying conservation protections (described as "durability" requirements) to a number of off-Project mitigation acres equal to the number of habitat acres impacted by the disturbance or development area at the site (1:1 mitigation). This mitigation option will achieve an additional "benefit" or "uplift" to the quality of juniper-encroached habitat through juniper removal habitat enhancement to improve impacted big game habitat. The mitigation project site ultimately chosen will ensure that the mitigation benefits are "in-kind" and "in-proximity," because the mitigation project site will be in sagebrush and/or bitterbrush-dominant habitat in Crook County within mapped big game winter range and within the area associated with impacts from the facility (or an alternative site approved by ODFW), consistent with ODFW's consultation as to what would be an acceptable geographic range allowable for mitigation site location. The Applicant shall maintain the benefits of this mitigation option throughout the actual life of the Project and shall visit the site after 12 years of treatment and contract to have any newly established juniper in cut units removed. If the Applicant elects this option, before site clearing or grading, the Applicant shall submit documentation to Crook County Community Development that the mitigation project ultimately satisfies these standards. At that time, the Applicant shall also provide the County with a fully executed instrument preventing development on the final mitigation site during the life of

Commented [JGS*04]: 4. See comment #1 above

Commented [JGS*05]: Please refer to ODFW 2013 - Big Game winter habitat map rationale - white paper. This white paper explains rationale for why the Department considers winter range category 2 "essential" habitat.

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Commented [JGS*07]: The Habitat Category 2 - mitigation goal is is "No net loss of habitat quantity and quality and to provide a net benefit of habitat quantity and quality"

Commented [JGS*08]: See bullet above

Commented [JGS*09]: 1:1 will not provide a net benefit in habitat quantity and quality.

Commented [JGS*010]: Through the life of the project - through reclamation.

the Project.

- **Option 2 (One-Time Fee-in-Lieu Payment to Deschutes Land Trust, Crook County/Crook County Soil and Water Conservation District (SWCD) or Other Established Conservation Organization)** will achieve the agreed-upon mitigation standards through a mitigation payment calculated according to the formula recently recommended by ODFW for similar projects in Crook County. Per below, if the Applicant elects this option, before applying for building permits, the Applicant shall submit documentation to the County that the payment has been made. This will ensure that mitigation occurs prior to facility construction.
- **Option 3 (Alternative Mitigation Project Approved by ODFW)** requires approval by ODFW and therefore will necessarily achieve the agreed-upon mitigation standards under ODFW's habitat mitigation rules, absent which ODFW approval the Applicant and County and ODFW would presume such alternatives did not meet ODFW rules. If the Applicant and ODFW reach an agreement for other project-specific mitigation, which ODFW determines is consistent with ODFW's habitat mitigation rules at OAR 635-415, in accordance with current legal standards, the Applicant shall submit documentation of that final, fully executed agreement to Crook County Community Development before site clearing or grading at the Project site. For sake of clarity, if ODFW does not agree to such an alternative, Option 3 shall not be allowed to count as mitigation and *only* Option 1 or 2 would be permissible as mitigation in such case.

Each of these mitigation options are discussed in greater detail later in this document.

Project Description

The Applicant proposes to construct, develop and operate a solar photovoltaic (PV) facility to be called the Powell East Solar Farm (the Project) in Crook County, Oregon. The Project is located within the Crook County Exclusive Farm Use-3 (EFU-3) zone on private land on tax lots 1615000000800 and 1615000001900 (the site).

The proposed facility will consist of a combination of photovoltaic panels, inverters, mounting infrastructure using fixed tilt or single axis tracker system, an electrical collection system, a substation, an energy storage system, operation and maintenance facility, private access roads, fencing, and/or associated transmission lines to connect to the utility facility. Electricity generated by the facility will be transmitted to a facility substation, where it will be increased to appropriate transmission line voltage levels per utility requirements. The Project will also include Associated Transmission Lines (ATL) to connect the facility to the power grid. The proposed connection would be either to BPA or Pacific Power interconnection facilities at the Ponderosa/Corral Substation complex. Preliminary estimates on the total permanent habitat disturbance for the longest alternative route show an area of 350 square feet (0.0011 acres). This area would be included in the total amount of land to be mitigated as assessed prior to construction.

The Project site consists of approximately 478 acres of private lands composed of low shrub/sagebrush and juniper trees. Various dirt roads are present throughout the site. A powerline corridor is present along the east border of the site, and an existing solar farm lies just east of the

Commented [JGS*011]: More specific on instrument that will prevent development as well as conflicting uses to wildlife habitat. - through reclamation.

Commented [JGS*012]: Most current formula accounting for inflation.

Commented [JGS*013]: Not a viable mitigation option

Commented [JGS*014]: Must account for and mitigate for impacts on new access roads and transmission lines as well as temporary impacts related to these developments.

powerline. An inactive corral with associated water tank and two wells were observed on the northeast portion of the study area, and livestock watering troughs were observed on the northwest portion of the study area.

The Project site is composed primarily of Natural Resources Conservation Service (NRCS) Class 6 and Class 7 non-irrigated soils with less than 10 percent of soils classified as Class 4 along the southwestern border of the site. The table below shows the allocation of soil classes and types.

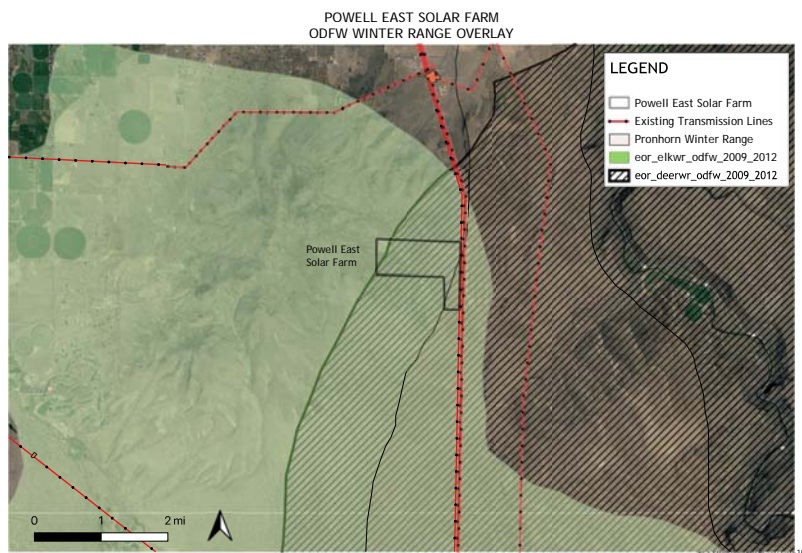
Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
075	Ayres very cobbly loam, dry, 0 to 8 percent slopes	7	7.7	1.6%
076	Ayresbutte-Ayres complex, dry, 0 to 8 percent slopes	6	180.4	37.9%
121	Era ashy sandy loam, 0 to 3 percent slopes	6	52.5	11.0%
147	Ayresbutte-Ayres complex, 3 to 8 percent slopes	6	155.2	32.6%
156	Ginserly-Hatrock complex, 12 to 30 percent north slopes	4	43.3	9.1%
262	Tristan extremely cobbly loam, 12 to 35 percent south slopes	7	36.1	7.6%
Subtotals for Soil Survey Area			475.3	99.9%
Totals for Area of Interest			475.9	100.0%

Site-Specific Habitat Assessment

The Applicant contracted with PBS Engineering and Environmental, Inc. (PBS) to conduct a site-specific habitat assessment of the Project site. As part of that site-specific habitat assessment, PBS conducted site visits to the Project site on March 25 and June 24, 2020, contacted ODFW and other agency staff, and reviewed scientific literature. PBS summarized its findings and conclusions from the site-specific habitat assessment in the Wildlife and Federal Sensitive Plant Assessment (July 2020).

As part of the site-specific habitat assessment (study) conducted by the Applicant's wildlife biologist (PBS), the Centralized Oregon Mapping Products and Analysis Support System (COMPASS) geographic information system was used to search for winter range habitat for the big game species deer (*Odocoileus hemionus*) and elk (*Cervus elaphus*) in eastern Oregon (ODFW 2016a). The entirety of the study area is within the ODFW elk mapped winter range, and the majority of the study area with the exception of the northwest portion is within the ODFW deer mapped winter range.

Additionally, Crook County maintains maps of the general ranges of the big game species deer, elk, and pronghorn (*Antilocapra americana*) within the county (Crook County 2019). The Crook County big game ranges were developed using the ODFW winter range data, then refined and updated by district biologists (ODFW 2012a). The study area is not within the Crook County elk general range. However, the southeast part of the study area is mapped to be within the Crook County pronghorn range, and the majority of the study area with the exception of the northwest portion is mapped within the Crook County deer range.



Despite the site being within mapped big game winter range, PBS noted Livestock grazing, as evident within the study area, that is known to reduce grass and forb cover, the preferred forage for pronghorn (USFWS 1994, Kindschy et al. 1982). Elk have also been shown to avoid areas where livestock are grazing (ODFW 2003). Additionally, SW Millican Road is approximately 0.75 miles east of the study area, and an existing solar farm is located east of the study area. Elk, deer, and pronghorn have a preference against habitat adjacent to roads and/or near areas of human disturbance (Rost and Bailey 1979, Kindschy et al. 1982, Innes 2011). Therefore, PBS does not consider the study area essential big game habitat.

PBS concluded that, based on the conditions of the study area observed during the site visit and analysis following the Fish and Wildlife Habitat Mitigation Policy flowchart, that the study area would be classified as "Habitat Category 3" for big game. "Habitat Category 3" is defined as important habitat for fish and wildlife that is limited either on a physiographic province or site-specific basis,

Commented [JGS*015]: Exhibit L and this statement provide no comprehensive quantitative assessment of the project area. Site visits on March 25, 2020 and June 24, 2020 visually surveyed the study area by walking linear transects. Only photographs in appendix D are provided as evidence of range and vegetation on the site. Nearby solar developments have identified similar habitat's as category 2.

depending on the individual species or population (State of Oregon 2020). In practice, this means that Habitat Category 3 habitat impacts that may occur as a result of the project can be mitigated according to ODFW's mitigation strategy as "In-kind, in-proximity mitigation." "In-kind habitat mitigation" are measures which recreate similar habitat structure and function to that existing prior to the development action, and "in-proximity habitat mitigation" are measures undertaken within or in proximity to areas affected by a development action (State of Oregon 2020).³

Agency Consultation and Mitigation Recommendations

The Applicant consulted with ODFW regarding fish and wildlife habitat impacts on the site on March 19, 2020. ODFW indicated that mitigation would be required for any permanent impacts to wildlife at the site. They stated that a mitigation plan that included a payment-to-provide mitigation plan using the same formula and level of detail as the recently approved Millican Solar Project would be acceptable. ODFW offered to share this plan with the developer. During the March 19, 2020 discussion, ODFW agreed, in concept, to the following overall mitigation approaches and stated that the location of such mitigation would be acceptable if located within Crook County:

- 1) A juniper treatment mitigation project, if sited in sage/bitterbrush type habitat,
- 2) A one-time fee-in-lieu payment mitigation strategy, or
- 3) An alternative mitigation project agreeable to ODFW.

ODFW agreed to these approaches in concept and recommended that the Applicant implement the agency's preferred option, a one-time mitigation payment or juniper removal, which ODFW staff described as the "easiest" and "low hanging fruit," due to abundant siting options in Crook County. ODFW stated that the one-time mitigation payment could be coordinated through a third party, such as the Deschutes Land Trust (DLT), or coordinated by the Applicant, the approach that the agency had accepted at other nearby solar developments recently permitted in Crook County (the Gala, Tango, and Millican solar projects) and recommended they use the most recent payment formula used for the Millican project. ODFW stated that the agency is no longer accepting payments directly for mitigation.

During consultation, ODFW recommended that the Applicant mitigate for mapped big game winter range at a ratio of 2:1. Historically, ODFW has recommended a 2:1 mitigation ratio for Category 2 mitigation projects in Crook County⁴ in order to provide a "buffer" to account for a failure rate of any future habitat improvement treatments and still meet the agency's mitigation goals of "no net loss"

³ Because the County's map revisions were never adopted, ODFW's policy has been to treat areas within big game overlays appearing on ODFW's maps as Habitat Category 2. The rationale for ODFW's approach is described in the 2013 ODFW Oregon Big Game Winter Habitat (ODFW 2013) document. Page 3 of that document contains a flow chart that shows the decision-making that leads to the Category 2 designation. The Applicant notes that, under that framework, some flexibility appears to be warranted regarding the "Step 1. Is the Habitat 'Essential'?" and "Step 2: Is the Habitat 'Limited'?" components of the flow chart. Impacted habitats should carry less weight in this analysis, which would inform a reasonable mitigation strategy.

⁴ In other counties, such as Lake County, ODFW has agreed that a lower mitigation ratio for juniper treatment projects would meet their mitigation standards.

Commented [JGS*O16]: March 19, 2020 was a phone conference call related to all of New Suns upcoming projects (Crook Flat, West Prineville, TSR North, and Powell East) - not on site.

Commented [JGS*O17]: No agreements "in concept" were made on March 19, 2020
- see ODFW appeal statements - Crook Flat, West Prineville, TSR North.

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Commented [JGS*O19]: Correct

Commented [JGS*O20]: 2:1 meets the mitigation goals of category 2 by providing no net loss of habitat quantity or quality and to provide a net benefit of habitat quantity and quality.

Commented [JGS*O21]: whether the map revisions would have occurred or not is of no consequence (County mapped deer and pronghorn habitat was the same prior to ordinance 259 discussions). The negotiations ODFW was holding with the County was to recognize that this area is impacted yet still essential habitat (category 2). it allowed for developers to skip the avoidance test within our mitigation policy but never was intended to be a pass to not complete meaningful and prudent compensatory mitigation. I would refer everyone to the gala solar development record for evidence of this discussion which resulted in the gala site identified as category 2 and mitigated at 2:1.

plus “net benefit.” However, ODFW has also endorsed alternative mitigation approaches for Crook County projects that ODFW viewed as “Category 2” projects, including a 1.5:1 mitigation ratio for impacts to mapped big game habitat at the Crook Flat Solar Project (consultation also discussed historical ranges for other permits ODFW approved of mitigation plans for, as discussed below.)

The Applicant subsequently reinitiated consultation with ODFW (Greg Jackle) again on June 18th, 2021 to discuss mitigation approaches and ODFW reiterated that they recommend compensatory mitigation be conducted such that their goal of “no net loss and a benefit” occur.

Commented [JGS*022]: Prior to this phone call, there were e-mail correspondence on March 11, 2021 - it referenced meeting ODFW's goal of "no net loss and a benefit" with a 2:1 ratio.

MITIGATION MEASURES

The goal of the mitigation measures in this WMP is to avoid or minimize impacts on plants and wildlife and their habitats, consistently with all applicable legal standards.

The Applicant notes that, historically, ODFW has recommended a wide range of mitigation for solar projects with habitat comparable to habitat at the Project site, including projects that the Applicant's affiliates have successfully permitted, with ODFW concurrence and participation in a half-dozen Harney and Lake Counties' related permitting processes (as well as completed implementation of for multiple sites). Approved mitigation approaches at those projects for disturbance of comparable habitat (sage dominant and/or big game winter range) included no mitigation, mitigation with no durability obligations, invasive weed treatments with no other mitigation obligations, and mitigation ratios ranging from 1.1:1 to 3:1 (in addition to zero mitigation). As part of the Webster Road Solar Farm CUP, for example, approved in Lake County in January 2020, ODFW agreed that an alternative option to be approved by ODFW in the future that satisfies the agency's habitat mitigation policy would be acceptable. ODFW also recommended to the Applicant that the Applicant rely on the wildlife mitigation plan for the Millican Solar Project CUP amendment, approved in Crook County in 2020 after HB 2329 went into effect, as an example. ODFW stated that the level of detail included in that mitigation plan would be sufficient for an acceptable compensatory mitigation proposal for this Project. As such, the approaches that the Applicant is proposing in this plan are well within the ranges of mitigation approaches historically recommended and/or endorsed by ODFW, and in particular those ODFW recommended and approved for Crook County solar CUPs, including substantially identical habitats and impacts in the immediate (even adjoining) vicinity.⁵

The Applicant proposes the following mitigation measures, based on consultation with USFWS and ODFW, as described above.

General Avoidance and Minimization Measures

- Access Roads: The Applicant will use existing public and private roads where reasonably possible to access the construction and staging areas. In the event that new access roads are required, roads will be decommissioned after construction is completed, unless the road is required for safe access during long-term operations and maintenance of the Project, or at the request of the landowner.

Commented [JGS*023]: Mitigation for temporary impacts of new roads that will be decommissioned needs to be identified as well as permanent impacts of roads that are not decommissioned.

⁵ Harney County: Starvation Ridge Solar Farm*; Riley Solar Farm Best Lane*, Riley Solar Farm Suntex, South Burns Solar Farm. Lake County: Fort Rock South Solar Farm; Fort Rock North Solar Farm; Fort Rock East Solar Farm; Webster Road Solar Farm.

- **Waste Management:** To avoid attracting predators to bird nests and other wildlife resources, the Applicant will instruct the contractor to store waste that would attract such wildlife in closed containers at all times.
- **Speed Limit:** To help avoid injury to wildlife that may be present in the Project area, the Applicant will require a 15 miles-per-hour speed limit during construction and restoration activities.

Migratory Bird Conservation Measures

The site-specific habitat assessment found that no ground nests or raptor nests were observed onsite during the site visit. The site does provide some suitable nesting habitat for non-ground nesting birds, as a few larger trees are present, which are also suitable for perching. However, this type of habitat is not limited in the area surrounding the Project site. The site has a history of cattle grazing which may negatively impact ground nesting birds.

If possible, the Applicant will aim to conduct vegetation removal and construction outside the nesting season to avoid impacts to any active nest sites (March 1 to August 1). If clearing and/or construction does take place during the nesting season, a pre-construction survey will be conducted between late spring through summer by a qualified observer to confirm that no active nests will likely be impacted within the Project area. If such active nests are located within the Project area, and are otherwise unavoidable, such nests shall be left undisturbed and monitored until a qualified biologist determines that the nest is no longer occupied.

Big Game Avoidance and Minimization Measures

Mitigation measures developed for the Project in response to permanent impacts to mapped big game winter range include the following:

- Construction Impact Reductions.
- Wildlife Impact Avoidance Measures (*e.g.*, exclusionary fencing).
- Compensatory Mitigation, as discussed below.
- **Exclusionary Fencing:** The Applicant will install exclusionary fencing around the Project site. Fencing will be 8 feet tall at a minimum (mule deer are able to clear lower heights).
- Gates will be installed in or near the corners of the fenced perimeter of the facility where reasonably practical to allow removal of any large game that inadvertently enter the fenced area.
- **Restoration:** To reduce Project impacts on wildlife habitat, the Applicant will restore and revegetate temporary disturbance areas. Revegetation efforts will include re-seeding with native and desired species as approved by the county weed master and in compliance with the county approved weed plan.

Compensatory Mitigation

Despite the site-specific habitat assessment concluding that the Project site contains Category 3 habitat, the Applicant, in the spirit of cooperation and a desire to mitigate any impacts from the Project to local wildlife, after consultation with ODFW, has agreed to mitigate impacts to big game habitat that will be permanently impacted by construction and operation of the Project according to

ODFW's recommendations for Category 2 habitat ("no net loss and a benefit"). The Applicant proposes to achieve mitigation through one of three options, presented below.

Each of Applicant's proposed mitigation options are designed to achieve ODFW's habitat mitigation policy goal of "no net loss and a benefit" for areas permanently impacted by construction on the site. "No net loss and a benefit" is the standard that applies to higher-quality "Category 2" ("essential") habitat under ODFW's habitat mitigation rules. See OAR 635-415-0025(2). Thus, the Applicant is proposing to mitigate at a *higher* standard than the site-specific habitat assessment indicates is required.

OPTION 1: CONSERVATION OF LIKE HABITAT WITH JUNIPER REMOVAL UPLIFT IN CROOK COUNTY

Backdrop for Juniper Removal as Habitat Improvement: Strong evidence indicates that western juniper has significantly expanded its range since the late 1800s by encroaching into landscapes once dominated by shrubs and herbaceous vegetation. Woodland expansion affects soil resources, plant community structure and composition, water, nutrient and fire cycles, forage production, wildlife habitat, and biodiversity. The habitat improvement goals of juniper management include restoring ecosystem function and a more balanced plant community that includes shrubs, grasses, and forbs, and increasing ecosystem resilience to disturbances.⁶

Juniper Treatment Habitat Improvement consists of treating areas of sagebrush/bitterbrush habitat next to juniper stands where the foraging habitat previously available for big game grazing is experiencing juniper encroachment. As noted, juniper encroachment reduces forage available to big game, such that a juniper removal program would improve big game grazing habitat by facilitating the re-growth of forage. Accordingly, juniper removal mitigation results in overall habitat improvement at mitigation sites, causing "uplift" to historically degraded habitat.

Scale: Per consultation with ODFW and, in keeping with ODFW's habitat mitigation rules, ODFW's direction for mitigation project scale is that there be "no net loss" or "no net loss and a net benefit" for big game habitat impacted by the Project site. Based on existing ODFW big game habitat maps, the maximum development impact to mapped big game winter range would be 320 acres. As noted, the full Project build-out may ultimately be less than the total permitted area for which the Applicant has applied. Therefore, the final Project design will define the actual scale of permanent impacts for which the Project must mitigate.

The Applicant will assess the total amount of land to be mitigated and notify the County prior to construction (or other disturbances), based on the proposed layout and associated impacted acres of that final facility design (and impact area). The Applicant will calculate the final habitat disturbance area based on the number of acres developed within mapped big game winter range on the site. This mitigation requirement would also apply to the extent that fencing or other disturbance of access to habitat by big game winter range was occurring (and materially adverse), even if prior to actual full

⁶ Miller, R.F., Bates, J.D., Svejcar, T.J., Peirson, F.B., and Eddleman, L.E., 2007. Western Juniper Field Guide: Asking the Right Questions to Select Appropriate Management Actions: U.S. Geological Survey Circular 1321.

Commented [JGS*024]: The Habitat Category 2 - mitigation goal is is "No net loss of habitat quantity and quality and to provide a net benefit of habitat quantity and quality"

Commented [JGS*025]: 635-415-0025 Implementation of Department Habitat Mitigation Recommendations

(2) "Habitat Category 2" is essential habitat for a fish or wildlife species, population, or unique assemblage of species and is limited either on a physiographic province or site-specific basis depending on the individual species, population or unique assemblage.
(a) The mitigation goal if impacts are unavoidable, is no net loss of either habitat quantity or quality and to provide a net benefit of habitat quantity or quality.
(b) The Department shall act to achieve the mitigation goal for Category 2 habitat by recommending or requiring:
(A) Avoidance of impacts through alternatives to the proposed development action; or
(B) Mitigation of impacts, if unavoidable, through reliable in-kind, in-proximity habitat mitigation to achieve no net loss of either predevelopment habitat quantity or quality. In addition, a net benefit of habitat quantity or quality must be provided. Progress towards achieving the mitigation goals and standards shall be reported on a schedule agreed to in the mitigation plan performance measures. The fish and wildlife mitigation measures shall be implemented and completed either prior to or concurrent with the development action.
(c) If neither 635-415-0025(2)(b)(A) or (B) can be achieved, the Department shall recommend against or shall not authorize the proposed development action.

facility construction, as applicable at the time of the impact, as well as taking into account the quality of the habitat lost (or otherwise adversely impacted) due to Project impacts.

This mitigation option (Option 1) will achieve “no net loss and a benefit” of habitat by applying conservation protections (described as “durability” requirements below) to a number of off-Project mitigation acres equal to the number of habitat acres impacted by the disturbance or development area at the site (1:1 mitigation). This mitigation option will achieve an additional “benefit” or “uplift” to habitat quality through juniper removal habitat enhancement to improve historically impacted big game habitat.

For juniper removal habitat enhancement, a mitigation site acreage ratio of 1:1, plus a reasonable “failure” buffer would meet or exceed the standard of no net loss and a net benefit. The Applicant proposes to achieve buffering for juniper removal projects by conserving extra mitigation project acreage ranging from 1-3% for a mitigation project site with high-quality habitat and not to exceed 30% for a mitigation project site with low-quality habitat.⁷ For the sake of clarity and, as an example, if 320 acres of habitat were developed, 320 acres of juniper mitigation project (plus applicable buffer and subject to other criteria herein) would meet or exceed the required mitigation *scale*. (If lesser development occurred, this mitigation amount would scale down proportionally.) At other solar projects, ODFW has historically agreed with this calculation of scale to achieve no net loss and a benefit, consistent with the ODFW habitat mitigation rules.

Excess Eligible for Banking: If the Applicant conducts juniper removal mitigation in excess of the scale required to mitigate the effects at this site, the Applicant reserves the right to propose that excess mitigation be applied as credit toward mitigation requirements at other sites that the Applicant may propose to develop in the future.

Location Criteria: Any mitigation project(s) related to impacts from the Application will be implemented within ODFW’s currently mapped big game winter range within Crook County, selecting a specific habitat mitigation area (HMA) therefrom to benefit wintering big game associated with the area of impact (unless otherwise approved by ODFW) and will satisfy ODFW’s request that the mitigation satisfy “proximity” criteria consistent with the ODFW habitat mitigation rules.

Habitat type: For juniper removal mitigation, the HMA site selected will be habitat which is (or was previously) sagebrush and/or bitterbrush dominant (or would be expected to restored to such state after mitigation efforts) but suffering from juniper encroachment, such that juniper removal would improve habitat by facilitating the re-growth of vegetation that would provide forage for big game. For the sake of clarity, acceptable sites for juniper removal mitigation projects would not include different habitat types, such as removal of juniper from lodge pole pine stands, as this would not meet the “in kind” criteria pursuant to the ODFW’s habitat mitigation rules.

⁷ This proposal is consistent with ODFW’s feedback to the Applicant on other similar projects that for a mitigation site with relatively high-quality habitat, 5-10 acres of additional ground would be sufficient buffering (on a 320-acre site). The Applicant’s proposed failure buffer is also consistent with ODFW’s historical perspective that juniper mitigation projects (which, by definition, often are not on high-quality habitat) have a failure rate on average on the order of 20%. ODFW has previously expressed to the Applicant that 30% additional project area would be a reasonable maximum buffer to assume for juniper removal projects of this kind.

Commented [JGS*026]: ODFW recommends 2:1 like the other neighboring solar developments.

Commented [JGS*027]: Without a specific mitigation site identified, there is no way to assure this sentence is correct. site specific information is what ODFW needs to accurately assess and comment on if it will meet or exceed the standard. - This comment applies to the rest of the scale section, the location criteria as well as habitat type. To discuss buffering and low quality habitat versus high quality habitat, the mitigation site needs to be identified.

Alternative locations: The Applicant will undertake commercially reasonable efforts to secure a mitigation location with the above-specified habitat characteristics in Crook County. If, despite such efforts, a suitable mitigation project cannot be realized in the County, a mitigation project in another location approved by ODFW shall be implemented.

Durability: Durability, or measures that function to facilitate and attempt to assure the survival of the beneficial aspects of the mitigation measures over the term of the facility developed, requires two aspects: (1) Protection of the mitigation action site (where applicable) for the term of the facility, to prevent subsequent destruction of the treatment site (*i.e.*, development); and (2) Maintenance, or actions such that (where applicable) revisit from time to time the treatment area to mitigate deterioration of the mitigation treatment or project;

(1) Site Protection: Prior to construction (or other disturbances to habitat or big game wildlife's access) at the site by the Applicant, the Applicant or a third party will provide the County with durability "assurances," demonstrating that the survival and beneficial impacts of the mitigation measures will be sustained throughout the expected operating life of the Project or disturbance.

The Applicant may demonstrate adequate "durability" by providing the County with evidence of an outright purchase of the mitigation area, a conservation easement, a working lands agreement, or other materially similar instrument to prevent development or other substantial adverse impacts to the site habitat by the landowner. Actions may include other durability measures approved by ODFW to implement the intent of this durability requirement. Facility life for the Project shall be presumed to be 40 years unless demonstrated otherwise by Applicant at the time that the Applicant presents evidence of durability to the County. Thus, the term for any durability restriction or agreement described above will be for a minimum of 40 years unless demonstrated otherwise by Applicant.

Before site clearing or grading at the Powell East site, the Applicant will provide Crook County Community Development with a fully executed instrument to prevent development on the final mitigation site during the life of the Project, including but not limited to a working lands agreement, a deed or outright purchase agreement, or a conservation easement.

(2) Maintenance: The maintenance aspect of a mitigation project may be achieved by the following mechanisms:

a) **Retreatment Actions:** Actions which examine the success and failures of the treatment and take reasonable remedial actions at such time, at one or more intervals during the target durability term. To maintain the effectiveness of mitigation, at 12-year intervals after the original mitigation treatment, the Applicant will contract to have any newly established juniper in the cut units removed to address regrowth of juniper seedlings; or

b) **Extra Buffering:** Enlargement of the treatment project such that, over time, assuming a reasonable failure or degradation rate, the cumulative net criteria of "no net less and a benefit" (commensurate with applicable permit conditions and this plan) is reasonably expected to be met net of cumulative degradation of the Project over time; for juniper removal this could be met by adding extra acres (per elsewhere in Plan); or

c) **Other measures:** Other measures reasonably likely to have comparable effects as approved by ODFW.

Commented [JGS*028]: through decommissioning

Commented [JGS*029]: Including provisions that restrict conflicting uses on this site. these include (i) increased grazing above levels approved under existing grazing management plans unless approved in writing by ODFW; (ii) all nonagricultural uses unless agreed to by ODFW; (iii) grading, mowing, blading, or expansion of impervious surfaces or access road networks, and (iv) divisions of the mitigation site.

(An example of such degradation to be maintained against would be juniper encroachment slowly invading back into the treatment area.)

For juniper removal mitigation, by way of example not limitation, the durability requirements for the Application could be met as follows: The treatment area is subject to a working lands agreement preventing future development, and the treatment is either revisited and refreshed after 12 years (or suitably enlarged to offset future juniper encroachment back into the treatment area) with extra acres (for a high quality site) of 10 acres.

(3) Monitoring: No monitoring will be required beyond revisiting the treatment area after 12 years, given the nature of the conservation and treatment actions, which are primarily “one time” actions (conservation) and require only minor updates once every twelve years, given the slow rate of juniper growth.

Commented [JGS*030]: A Monitoring plan is needed to assure the HMP will achieve the mitigation goals and standards.

Detailed Mitigation Implementation Plan

Prior to construction of the proposed facilities (or other applicable habitat disturbance), a detailed mitigation implementation plan will be prepared, defining the specific mitigation project(s) being implemented for the applicable habitat disturbance, including documenting how such detailed mitigation implementation plan addresses the criteria herein and applicable permit conditions, such as the specific land/site where the mitigation project will occur (including a map), quantitative and qualitative success criteria, project timeline (including evaluation of applicable goals and standards, along with monitoring and evaluation methods and frequency), durability measures being implemented, and reporting schedule (including a reasonable timeline after the execution of the mitigation agreements, such as with the landowner) by which time the mitigation measures will initially be completed.

Commented [JGS*031]: Saving all this for later means there is a lack of evidence in the record (at the time of County approval) that the mitigation goal will be achieved.

Applicant will provide a copy of the detailed mitigation implementation plan and related documentation to the Crook County Planning Department at such time. To the extent variations from the above criteria (and as otherwise noted above) are part of the detailed implementation plan at the time of implementation (and not later than timing criteria above), Applicant shall seek ODFW's recommendations regarding such deviations, and document the status of the same to the Crook County Planning Department.

Specific Treatment Actions: Juniper cutting under this mitigation plan will occur within a larger HMA mitigation project site in which juniper encroachment has occurred, and ideally occur in and target Phase 1 and 2 stands to reduce competition with shrubs, grasses and forbs in order to improve grazing habitat by facilitating the re-growth of sagebrush/bitterbrush and/or other vegetation that would improve forage for big game, including through use of qualified contractors, or other previously experienced or appropriately instructed and supervised parties (including by parties previously utilized by Applicant affiliates, such as Wildlife Consultant or the Crook County Soil and Water Conservation District). Areas where juniper to be cut will be identified and divided into cut units.

Some Phase 2 and all Phase 3 stands will be retained for their cover value. All pre-settlement aged juniper will be preserved.

Cut units will be established to improve habitat for wintering big game. A mitigation site acreage ratio of 1:1, plus a reasonable failure buffer (as described elsewhere in this plan), as compared to

impacted acreage will be treated, to achieve the mitigation goal of no net loss plus net benefit. To act as a contingency for a failure rate of the juniper treatment over the duration of the treatment project, the amount of buffer will be determined by the condition of the mitigation site. For example, older Phase 3 juniper has been known to have higher failure rates than Phase 2 juniper and may require more of a buffer to allow for the higher failure rate. Buffering may be achieved by extra treatment acreage ranging from 1-3% for a mitigation project site with high-quality habitat (3.2-9.6 acres per 320 acres of mitigation project site) and not to exceed 30% for a mitigation project site with low-quality habitat.

Treatment would comply with other criteria listed above and per Application permit conditions.

For clarity, required treatment related to the Application shall not exceed the total acres ultimately disturbed by the Powell East Project plus a buffer. The maximum mitigation acreage requirement shall be proportionally reduced if the Applicant ultimately develops or disturbs a smaller footprint at the Project site. The Applicant intends that, if such a juniper treatment project were to be implemented through Deschutes Land Trust (DLT) on the Aspen Valley Ranch (or some other comparable project) on up to the total number of acres ultimately disturbed by the Powell East Project, that mitigation project would satisfy the requirements of this mitigation Option.

OPTION 2: ONE-TIME FEE-IN-LIEU PAYMENT

A: ONE-TIME FEE-IN-LIEU PAYMENT TO ESTABLISHED CONSERVATION ORGANIZATION

This mitigation approach has been the option used and approved (and recommended) by ODFW and the Crook County Planning Commission at other recently developed similar solar PV facilities in the area including the Gala, Tango, and Millican, Solar projects. It would involve making a one-time contribution to the Deschutes Land Trust (DLT) or other established conservation organization for wildlife enhancement on the Aspen Valley Ranch (or some other comparable project)⁸.

The contribution amount will be determined by the following ODFW-approved formula utilized for other similar solar energy projects within the surrounding area:

$$\text{Payment per Acre} = M * (R + L + V + P + S)$$

where

- 'M' is the mitigation ratio to use as a multiplier on cost per acre. Historically ODFW has used a 2:1 ratio (in Crook County) for mitigation projects on Category 2 land. Despite Applicant's professional wildlife consultant's site assessment that the site is Category 3 habitat, the Applicant agrees to a mitigation ratio of 2:1 for areas permanently impacted by construction within the ODFW mapped big game winter range portion of the site

Commented [JGS*032]: No certainty that this hypothetical mitigation site will offset the impacts to the impacted solar development site. Providing a no net loss off habitat quantity and quality and to provide a net benefit of habitat quantity and quality.

Commented [JGS*033]: ODFW continues to support option 2 whether that be with Deschutes Land Trust or the Crook SWCD. ODFW would like to assure that the current formula is adequate enough for these entities to be able to satisfy the mitigation requirements with the Payment to Provide option. ODFW recommends the County build in inflation protections in this formula in case the project is delayed in construction.

⁸ The County previously accepted a fee-in-lieu payment for the ODFW supported and funded Aspen Valley Ranch location that was then administered to a subsequently created mitigation project.

(approximately 320 acres).⁹ This ratio will meet ODFW's mitigation goal of "no net loss and a benefit.

- **'R'** is the cost of restoring habitat including the administrative costs of design, contracting, implementation, and monitoring. Based on recent ODFW and DLT input, R is \$120.00.
- **'L'** is the cost of long-term maintenance of the habitat restoration investment, (i.e. regular re-entry intervals for juniper thinning, regular invasive weed treatments). Based on recent ODFW and DLT input, L is \$90.00.
- **'V'** is the land value per acre where habitat improvements may be taken. Based on a recent appraisal received by DLT for the Aspen Valley Ranch, V is \$194.24.
- **'P'** is the project development and transaction cost of processing the easement transaction. Based on DLT input, P is \$15.77.
- **'S'** is the stewardship endowment cost. Based on DLT input, S is \$22.33.

An example of how this formula would be applied to the Project in Crook County is as follows:

$$M = 2:1$$

$$R = \$120/\text{acre} \quad (120+90+194.24+15.77+22.33) = \$442.34/\text{acre} * M$$

$$L = \$90/\text{acre}$$

$$V = \$194.24/\text{acre}$$

$$P = \$15.77/\text{acre}$$

$$S = \$22.33/\text{acre}$$

This example utilizes values that have been used recently on other solar projects (Tango and Millican) in the area on a mitigation site managed by DLT. The Applicant will make this one-time payment to DLT or other land conservation organization.

The Applicant will submit to Crook County Community Development documentation that such payment has been made before the County issues building permits, which may be issued subject to documentation or demonstration of required mitigation action before physical improvements are constructed.

B: ONE-TIME FEE-IN-LIEU PAYMENT TO CROOK COUNTY

In November of 2020 Crook County and Crook County SWCD entered into a Memorandum of Understanding (MOU)¹⁰ to define the respective roles and working relationship between them with the goal of working collaboratively to support wildlife habitat mitigation within the county. One goal of the MOU is to facilitate payment in lieu of on-site mitigation options in order to streamline approval of mitigation projects. As described in the MOU, the County

⁹ This ratio is consistent with the ratio the County has previously applied, with ODFW agreement, to similar habitat sites (the Tango, Millican, and Crook Flat Solar Projects) located nearby.

¹⁰ See MOU attached as Appendix A to this plan.

will act as a Fiscal Agent on all mitigation projects while SWCD will (amongst other things) work with ODFW to develop a mitigation formula and assist in the implementation of projects and monitoring.

Under this option, Applicant will make a one-time formula-based payment to Crook County for a mitigation project to be implemented by SWCD, **or other qualified organization**, prior to applying for building permits, which may be issued subject to documentation or demonstration of required mitigation action before physical improvements are constructed.

The Applicant has been working with SWCD to identify a site and develop a site-specific plan for mitigation under this option. This plan is attached as Appendix B.

Commented [JGS*034]: MOU option with Crook County should just go to Crook SWCD or amend the MOU to include other entities (ex) watershed councils, etc....

OPTION 3: ALTERNATIVE MITIGATION PROJECT APPROVED BY ODFW OR COOPERATIVE MITIGATION AGREEMENT WITH ODFW

As an alternative to the two options described above, other mitigation measures shall be permitted by Applicant to mitigate habitat impacts, so long as they will meet the criteria provided herein and satisfy related permit conditions. Such alternative may be developed in consultation with ODFW.

In combination with conservation components of alternative mitigation projects (*i.e.*, protecting like/in-kind, in proximity habitat, juniper treatment, fencing upgrades), examples of other potentially acceptable alternative mitigation uplift measures (*i.e.*, to create "net benefit") could be wildfire suppression measures, weed treatment, water supply improvements, etc. Those approaches are consistent with the Applicant's discussions with ODFW during consultations on prior solar projects and could provide adequate mitigation if approved by ODFW at the time such are proposed.

For the sake of clarity, if any alternative mitigation measures, other than Options 1 and 2 stated above, are proposed in the future to satisfy habitat mitigation criteria, those alternative measures shall be subject to the same criteria as applicable to a permit application and subject to ODFW's (*not the County's*) consent to the proposal, to confirm that the proposal complies with ODFW habitat mitigation requirements and achieves the "no net loss and a net benefit" and in-kind mitigation standards. If no such alternative mitigation proposal meeting these criteria is identified by the Applicant, approved by ODFW, and implemented by the Applicant, then the Applicant shall implement mitigation in the form of either juniper removal or a one-time payment, as described above.

If the Applicant and ODFW reach an agreement for other project-specific mitigation, which ODFW determines is consistent with ODFW's habitat mitigation rules at OAR 635-415, in accordance with current legal standards, the Applicant shall submit documentation of that final, fully executed agreement to Crook County Community Development before site clearing or grading at the site.

Commented [JGS*035]: Not a viable mitigation option

SUMMARY

By implementing either, (1) a juniper treatment program on lands in Crook County mapped as big game winter range, or (2) the one-time fee-in-lieu payment plan outlined above, or (3) an alternative mitigation project approved by ODFW as provided herein and subject to the mitigation project criteria outlined in this WMP, the Applicant will achieve mitigation consistent with the requirements of ODFW's habitat mitigation rules at OAR Chapter 635, Division 415.

APPENDIX A
MOU BETWEEN CROOK COUNTY AND SWCD

MEMORANDUM OF UNDERSTANDING
between
CROOK COUNTY SOIL AND WATER CONSERVATION DISTRICT
and
CROOK COUNTY

I. EFFECTIVE DATE.

This Memorandum of Understanding (MOU) shall take effect on November 1, 2020, and shall be of continuous duration unless and until terminated by one or both parties pursuant to the provisions of the MOU.

H. PARTIES.

Crook County, a political subdivision of the State of Oregon (County) and Crook County Soil and Water Conservation District, a municipal corporation of the State of Oregon (District); collectively referred to as "Parties" or individually referred to as "Party."

III. PURPOSE.

The purpose of this MOU is to define the respective roles and working relationship of the District and County as they work collaboratively to support wildlife habitat mitigation recommended by Oregon Administrative Rule (OAR 635-415) and required under Title 18 of the Crook County Code. Work activities may include, but are not limited to, Western Juniper Treatment, Range Seeding, and Noxious Weed Treatment to improve habitat for a variety of wildlife species.

This MOU will facilitate efficiencies in wildlife habitat mitigation by maximizing limited resources and staff. Nothing in this MOU shall be interpreted to limit the ability of either party to pursue independent priorities that are not joint priorities.

The area covered by this MOU is Crook County, Oregon.

IV. BACKGROUND.

County and the District each have unique missions. However, the Parties share a common vision for wildlife habitat mitigation in Crook County, and thus share many stewardship and restoration priorities.

The mission of the District is to provide assistance to Crook County residents to sustain agricultural lands and their natural resources. This is accomplished by:

- providing technical support;
- providing one-on-one, on-the-ground site visits;
- developing workshops and classes;
- assisting in the development of individual landowner management plans and projects;
- and
- seeking and providing grants and other financial assistance, as needed.

County represents its citizens and works to protect their rights, property, customs, culture and values. Wildlife and wildlife habitat are important factors that help make Crook County a great place to live. Crook County's Comprehensive Land Use Plan includes policies to protect wildlife habitat.

MOU between CCSWCD and Crook County

Page 1 of 4

Land use activities in Crook County may impact wildlife habitat in the Crook County and trigger habitat mitigation requirements. For this reason, County is interested in facilitating a program to streamline approval of mitigation projects. The Planning Department and County/Planning Commission require that developers work with Oregon Department of Fish and Wildlife (ODFW) and entities including CCSWD to identify and implement appropriate mitigation measures.

Mitigation activities may include payment in lieu of on-site mitigation. The Crook County Treasurer's Office/Finance Department is responsible for the County's budget and ensures fiscal accountability and will serve as the fiscal agent for mitigation funds.

V. RESPONSIBILITIES OF THE PARTIES.

A. COUNTY AND DISTRICT MUTUALLY AGREE AS FOLLOWS:

The Parties will communicate annually to ensure that costs are accurate and the mitigation formula is appropriate to continue successful mitigation project implementation and long-term project maintenance. The formula will also account for the District's and the County's administrative costs.

B. DISTRICT WILL:

- Conduct public outreach and education to develop projects consistent with the mission statements of both County and the District that align with the administrative rules adopted by the Oregon Fish and Wildlife Commission for the purposes of implementing ORS 496.012;
- Assist in the implementation of projects and monitoring;
- Seek additional funding to increase the scale of habitat improvement;
- Meet with both County and ODFW to ensure projects meet stated objectives;
- Work with ODFW to develop and provide a mitigation formula;
- Assist landowners in planning and implementing maintenance;
- Provide invoices to County on a monthly basis for payment for work completed and administrative fees;
- Provide the County with an ODFW approved project description, map and budget showing how and where funds will be used; and
- Provide an annual report to County and ODFW on the efficacy of the program and the status of existing mitigation.

C. COUNTY WILL:

- Act as Fiscal Agent on all projects;
- Maintain a separate, interest bearing fund for mitigation payments;
- Provide quarterly reports to the District showing fund balances;
- Retain project and maintenance funding until invoiced by the District;
- Provide timely payment of invoices for all work completed within 7-10 business days;
- Assist in the development of Deed Restrictions and other mechanisms to meet project durability requirements;
- Meet with both the District and ODFW to ensure projects meet stated objectives; and
- Keep mitigation reports on file.

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MOU between CCSWCD and Crook County

Page 2 of 4

VI. GENERAL PROVISIONS.

A. NO EMPLOYMENT RELATIONSHIP.

Nothing in this MOU shall be interpreted to create or establish an employer-employee relationship between the District and any staff provided by County. County shall be the "employer" of any and all County staff provided to further the objectives of this MOU. As an employer, County's obligations shall include, but shall not be limited to, the payment of any employee benefits, if applicable; paying all employer payroll taxes and making all withholdings required under state and federal law; and maintaining worker's compensation insurance coverage for any staff provided pursuant to this MOU.

B. INDEMNITY.

1. Subject to the limitations of Article XII, section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Crook County shall indemnify and hold, within the limits and subject to the restriction in the Oregon Tort Claims Act, District, its officers, agents, and employees, harmless from any and all claims, actions, costs or damages caused by Crook.
2. Subject to the limitations of Article XII, section 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), District shall indemnify and hold, within the limits and subject to the restriction in the Oregon Tort Claims Act, County, its officers, agents, and employees harmless from any and all claims, actions, costs, or damages caused by District.
3. Without limiting the generality of the foregoing, no Party shall be liable to any other party for any incidental or consequential damages arising out of or related to this MOU. No Party shall be liable for any damages of any sort arising solely from the termination of this MOU or any part hereof in accordance with its terms.

C. TERMINATION.

Either party may terminate its involvement by giving sixty (60) days written notice to the other party. Upon termination, each party's obligations, financial and otherwise, are ended. Payments will be made only for work completed up to the agreed upon termination date. Written notice to the parties shall be deposited with the United States Postal Service; either registered or certified, postage prepaid to the following addresses:

To County:	T	o	To District:
	Ann Beier	L	e
	Community Development Director		Lee Dunn
	300 NE 3rd St., Rm. 12	D i s t r i c t	C r o o k County Soil and Water Conservation
	Prineville, OR 97754	4 9 8	498 SE Lynn Blvd.
			Prineville, OR 97754

With an additional copy to:
Crook County Counsel
300 NE Third St.
Prineville, OR 97754

D. WRITTEN AMENDMENTS REQUIRED.

The terms of this MOU may be renegotiated or amended at any time by mutual consent of the

MOU between CCSWCD and Crook County

parties, solely by a writing signed by both Parties.

E. NON-ASSIGNMENT.

No Party may assign this MOU, in whole or in part, without the prior written consent of all Parties.

F. SEVERABILITY.

Should any provision or provisions of the MOU be construed by a court of competent jurisdiction to be void, invalid, or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair, or invalidate any of the other provisions of this MOU which shall remain in full force and effect.

G. ENTIRE AGREEMENT.

This MOU constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes any and all prior or contemporaneous agreements or understandings between the Parties, if any; whether written or oral, concerning the subject matter of this MOU which are not fully expressed herein.


H. PERIODIC REVIEW.

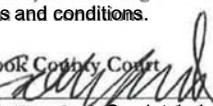
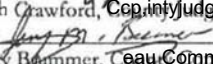
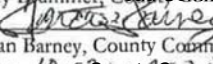
The parties will review this MOU annually to ensure that it continues to meet the needs of both parties.

I. COUNTERPARTS.

This MOU may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

SIGNATURES: All Parties, by the signatures below, hereby acknowledge that they have read this MOU, understand it, and agree to be bound by its terms and conditions.

District
By: 
Lee Dunn, Chair
Date: 12-22-20

Crook County Court
By: 
Seth Crawford, County Judge
By: 
Jerry Brummer, County Commissioner
By: 
Brian Barney, County Commissioner
Date: 10 / 01 4, 10

APPENDIX B
SWCD HABITAT RESTORATION PROJECT PROPOSAL



POWELL EAST SOLAR FARM WILDLIFE HABITAT MITIGATION PROPOSAL

Crook County Soil and Water Conservation District

ABSTRACT

The following habitat restoration project proposal was prepared by Crook County SWCD as a site specific plan to mitigate for the loss of big game winter range habitat that would result from the solar energy facilities that are being developed by Powell East Solar Farm in Prineville, Oregon.

INTRODUCTION:

Powell East Solar Farm, LLC is seeking a Conditional Use Permit (CUP) to develop a solar energy facility on the south side of Highway 126, west of Prineville. The Applicant is requesting a permit to develop a solar facility that is no larger than 320 acres. As a condition of approval prior to the construction of these facilities Powell East Solar Farm is required by Crook County to include a habitat mitigation plan. Powell East Solar Farm sought the technical expertise and local knowledge of Crook County Soil and Water Conservation District (Crook SWCD) to develop a mitigation plan that will satisfy this requirement by prescribing a specific habitat restoration plan in an area that is proximal to the location where the habitat loss will occur. This proposal outlines: the initial restoration project; plans to maintain the restored habitat; and monitoring guidelines. Crook SWCD proposes to carry out the following restoration and mitigation project, which will provide sustained habitat benefits for the life of the solar facility.

PROJECT OVERVIEW:

The Powell East Solar Farm Wildlife Mitigation Project was developed based on a site characterization of the solar farm area as Category 2 habitat. A Category 2 designation is largely based on characterization of the area as winter range habitat for multiple big game species. A mitigation ratio of 2:1 over the entire development area is proposed to meet ODFW’s goal of “no net loss and a benefit”. A map of the solar development project site with the overlays for mule deer, antelope and elk habitat is shown below.

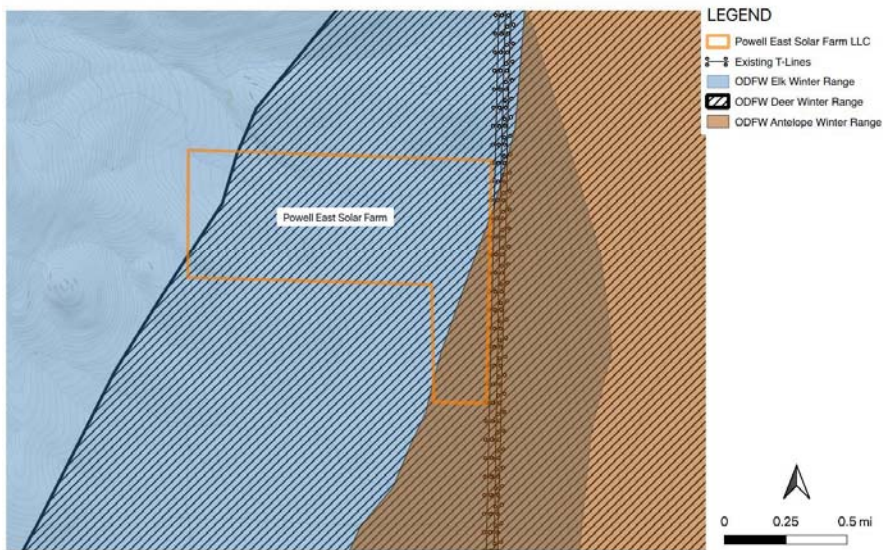
Powell East Solar Farm will be a maximum of 320 acres, therefore the total mitigation acreage required by the project will be a maximum of 640 acres. The specific acreage of the solar development and hence the mitigation project will be determined after a permit is issued. If the area impacted by the solar energy development changes this project site can accommodate that change and expand or shrink the project area accordingly. This wildlife habitat mitigation proposal demonstrates the ability to implement the forecasted 640 acres of habitat restoration in specific location in a timely manner, which will prevent a temporal loss of habitat.

Table 1: Maximum Mitigation Acreage Required

Description	Area (acres)	Mitigation Ratio (M)	Total Compensatory Acres Required
Category 2 Winter Range	320*	2:1	640
Total Mitigation Acreage			640

*Note: This is the maximum acreage assuming 100% of acreage will be impacted by the project. Actual acreage will be based on the final site design and will likely be lower.

Powell East Solar Farm
ODFW Mapped Winter Range Overlay



Based on these parameters Crook SWCD identified a location within the Crooked River Watershed that satisfies the proximity requirement, provides a similar shrub steppe ecosystem and is within ODFW's mule deer winter range boundary. The area is known to provide habitat for pronghorn antelope as well. The proposed restoration site is located on The Hatfield-Hyde Land Trust, eleven miles northeast of Brothers, Oregon. The landowners have a history of implementing voluntary habitat restoration practices and the land has been protected from subdivision through a designation as a land trust.

In 2020 the landowners received a restoration grant through The National Fish and Wildlife Foundation and they are currently implementing this project to enhance migration corridors for big game. The landowner is interested in expanding the restoration work that is outlined in the current restoration plan in order to expand the ecological benefits over a larger area in order to mitigate for the solar development using similar restoration techniques. Actions will include a variety of conservation practices that are designed to create a mosaic habitat that will provide adequate cover density and nutritious forage along the migration route of mule deer, elk and pronghorn antelope.

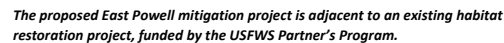
The existing restoration project was selected by the National Fish and Wildlife Foundation (NFWF) based on the location within the Upper Crooked River Priority Area identified within the 2020 Oregon Action Plan For Implementation of Department of the Interior Secretarial Order 3362 (pp 17-19). This NFWF project area selected for big game habitat restoration because of its location within ODFW's Mule Deer Initiative area that was designated in 2009. This area offers connectivity between intact summer and

PARTNERS:

Crook County Planning Department will be the fiscal agent and has record of the conservation easement on file. The County will also keep records of this mitigation plan and receive copies of annual monitoring as a component of the conditional use permit and assure the project is meeting the standard of the permit.

IMPLEMENTATION:

This area is protected from future fragmentation and development through the stipulations of the conservation easement, in which the property has been enrolled in since 2011. Vegetation monitoring will



be conducted by Crook SWCD and will include a baseline sampling followed by annual monitoring for five years following project completion. After the first five years the photopoint and vegetation data will shift to every five years and the annual monitoring will change to a phone interview with the landowner to talk about concerns and observations they have in the project area and capture management and utilization of the area. When follow up treatments occur there will be pre and post treatment monitoring conducted. The objective of the restoration treatments is to improve the habitat therefore from the baseline inventory we expect to see increased shrub cover, a minimum of five deep rooted perennial bunchgrasses per square meter, a reduction in juniper cover, invasive annual grasses at only trace levels, and a minimum of five species of native forbs on the site. If the vegetation is not trending towards these metrics by the 5 year post project monitoring date the site will be evaluated for additional restoration needs. At the time of the first juniper retreatment (approximately 15 years) additional conservation practices may be enacted to attain the restoration objectives.

Crook SWCD identified this specific area for restoration in order to demonstrate the ability to implement a project that meets the mitigation objectives of the solar developer, Crook County, and Oregon Department of Fish and Wildlife. The specific acres outlined in this proposal may be amended at the time of implementation in order to accommodate restoration objectives and the size of the solar facility. The specific area may be shifted for reasons such as but not limited to: ease of access; susceptibility to weed invasion; fire; slope; soil properties; or landowner preference. Any shift in the project footprint will remain on this property owner's land, be bound by the same land trust protections and be within the same wildlife habitat designations.

MONITORING SCHEDULE:

Year	Monitoring
2023	Baseline photo monitoring and ecological inventory
2024	Post project photo monitoring and reporting
2025	Annual Photopoint and ecological inventory
2026	Annual Photopoint and ecological inventory
2027	Annual Photopoint and ecological inventory
2028	5 year post project monitoring with photos and ecological inventory
2025-2032	Annual phone call check in with landowner
2033	10 year post project monitoring with photos and ecological inventory
2034-37	Annual phone call check in with landowner
2038	15 year post project monitoring with photos and ecological inventory
	Assess the need for retreatment
2039-2062	Repeat monitoring at previous intervals and adjust for retreatment and post project assessment periods
2063	Project Completion Report

BUDGET:

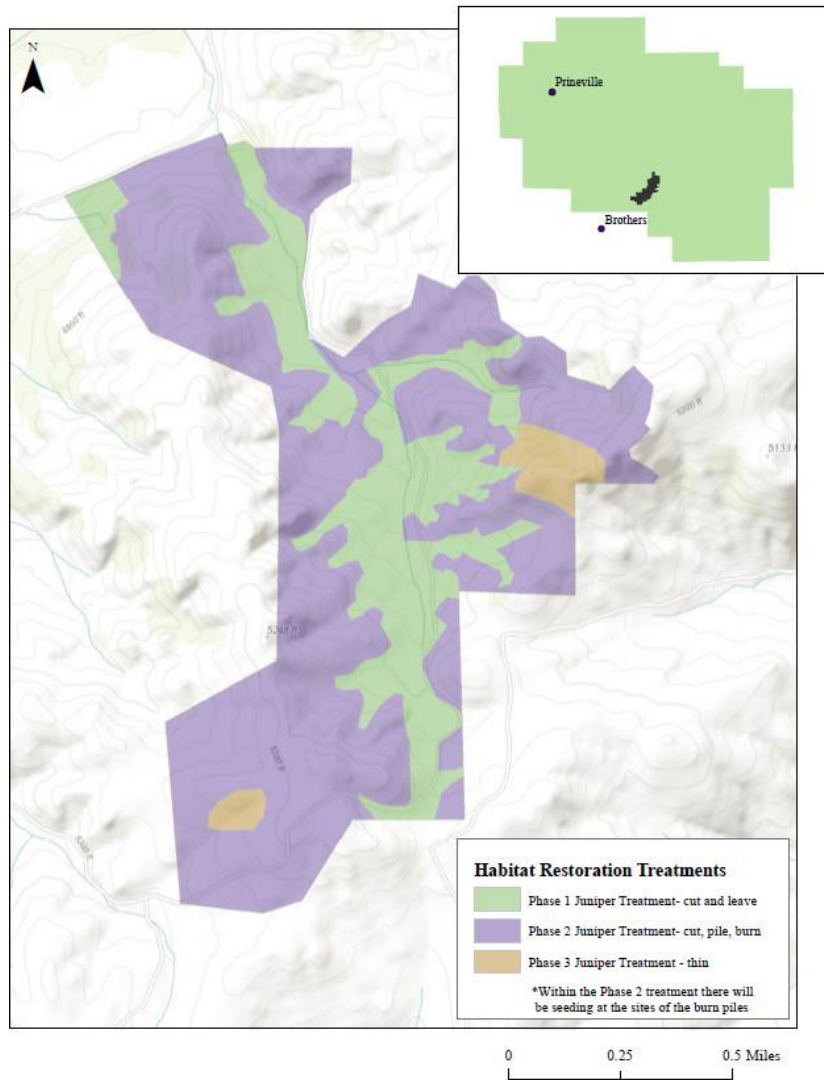
Implementing this project includes the cost of the on the ground restoration practices as well as the cost of project management, maintenance, stewardship, and the land value. A general formula will be used to determine the real cost of the project when it becomes finalized. The formula is Mitigation fund = (Acres*Mitigation ratio)*(Restoration+ Long Term Maintenance + Land Value + Stewardship). All of these costs will change from year to year and therefore cannot be accurately forecast until there is an implementation date that is within a calendar year.

The cost of restoration is estimated in the table below based on current costs (FY 2021) developed by NRCS for their EQIP program in the state of Oregon.

Restoration Cost (R)		Acres*	Cost per acre	Total cost	NRCS Practice
	Juniper retreatment (Phase 1)	170	\$40.57	\$6,896.90	314 Brush Management- Hand Tools, Light
	Juniper clearing (phase 2 with piling and burning)	447	\$405.62	\$181,312.14	314 Brush Management- Mechanical, Large Woody, Medium Infestation
	Juniper thin in thick stands	23	\$200.00	\$4,600.00	314 Brush Management- Hand Tools, Medium
	Drill seeding with native bunch grasses and forbs at burn piles	7.4	\$339.22	\$2,510.23	550 Range Planting- Native Species High Forb Drilled
	Project management (20%)			\$39,063.85	
		640		\$234,383.12	

PROJECT MAP:

Powell East Solar Mitigation



Appendix A: Upland Ecological Documentation Form

Observer	Date	Ranch Name									
Latitude:	Longitude:		Location Description								
Dominant Plant Species			Shrubs				Trees				
Estimated average density of mature, large perennial bunchgrasses			— individuals/m ²								
		No	Yes	If yes, species							
Sagebrush present?	<input type="radio"/>	<input type="radio"/>	Estimated sagebrush cover —								
Juniper present?	<input type="radio"/>	<input type="radio"/>	Estimated juniper cover								
			Encroachment phase ³								
Exotic Annual Grass Present?	<input type="radio"/>	<input type="radio"/>	Species:		Cheatgrass		Medusahead		Ventenata		
Infestations mapped?	<input type="radio"/>	<input type="radio"/>	Invasion Phase:								
Others Weeds Present?	<input type="radio"/>	<input type="radio"/>	Species								
Infestations mapped?	<input type="radio"/>	<input type="radio"/>	Date mapped:								
Identified ecostate stratum?	<input type="radio"/>	<input type="radio"/>	Record locations:								
Potential Threats (choose all that apply)	<input type="checkbox"/> Fragmentation <input type="checkbox"/> Juniper encroachment <input type="checkbox"/> Lack of fire <input type="checkbox"/> Recreation <input type="checkbox"/> Feral horses <input type="checkbox"/> Wildfire <input type="checkbox"/> Livestock grazing <input checked="" type="checkbox"/> Drought <input type="checkbox"/> Predation <input type="checkbox"/> Insecticide <input type="checkbox"/> Vegetation treatment <input type="checkbox"/> Invasive vegetation <input type="checkbox"/> Flooding <input type="checkbox"/> WNV <input type="checkbox"/> Other										
Will current grazing management (including wild horses) maintain/promote desirable vegetation?	<input type="radio"/> Yes <small>Rest/recovery is planned during periods when desirable vegetation is actively growing. Forage demand is in balance with forage supply.</small> <input type="radio"/> No <small>Continuous (every year) use during the period when desirable vegetation is actively growing. Forage demand consistently > supply.</small>								<input type="radio"/> Stable or <input type="radio"/> Increasing		
If shrubs are present, what is the dominant vegetation in the shrub interspaces? ⁶	Mature deep-rooted perennial bunchgrass (not Sandberg bluegrass, unless it is a Sandberg's site) Exotic annuals								<input type="radio"/> Stable or <input type="radio"/> Increasing <input type="radio"/> Decreasing		
If shrubs are largely absent, what occupies the interspaces between perennial bunchgrasses? ⁷	Bare ground/litter/desired forbs Exotic annuals								<input type="radio"/> Stable or <input type="radio"/> Increasing <input type="radio"/> Decreasing		
Are juniper seedlings and/or leader growth common?	Yes seedlings and/or leader growth common No								<input type="radio"/> Decreasing <input type="radio"/> Stable or <input type="radio"/> Increasing		
Evidence of recruitment of desired plants (multiple age class/functional groups present), all interspace filled with desired plants?	Yes No								<input type="radio"/> Stable or <input type="radio"/> Increasing <input type="radio"/> Decreasing		
How would the plant community most likely respond after wildfire?	Perennial bunchgrasses located under shrub canopies, thus more susceptible to mortality Perennial bunchgrasses located within shrub interspaces and more likely to survive fire.								<input type="radio"/> Decreasing <input type="radio"/> Stable or <input type="radio"/> Increasing		
Observed apparent trend (circle)	<input type="radio"/> Upward <input type="radio"/> Stable <input type="radio"/> Downward <input type="radio"/> Not apparent										
Rationale ⁸											

APPENDIX B: Perpetual Land Trust Agreement

PERPETUAL LAND TRUST AGREEMENT

“Trustors” **PATRICK D. HATFIELD and CONNIE M. HATFIELD, husband and wife**

“Trustee” **COMMITTEE OF TRUSTEES, as defined in Article 8, and their successors in Office, collectively referred to herein as the “Committee of Trustees” and individually referred to as “Member Trustee”**

“Independent Trustee” **KURT SOLAY, Independent Trustee**

This trust is irrevocable. Its principal purpose is to hold real property into perpetuity to protect wildlife habitat, to promote land conservation, and to continue existing grazing and cattle operations for the benefit of Trustors’ children and their issue. More specifically, it is Trustors’ intention in establishing the trust to accomplish the following:

Preamble

Trustors operate a cattle business on the Hatfield’s High Desert Ranch (the “Ranch”), which straddles both Crook and Deschutes Counties near Brothers, Oregon, less than a one hour drive from Bend, Oregon. The Ranch consists of approximately 14,000 deeded acres plus an additional 16,000 acres of Bureau of Land Management (“BLM”), state and absentee, privately-owned land. The Ranch has a 400 cow/calf capacity, with some yearling operations. The cattle range year round on the Ranch. The Ranch is also home to deer, elk, and antelope. Geese and ducks nest and give birth to their young in the irrigation dams every spring. Cougar, bobcats, jack rabbits, sage grouse, wood rats, badgers, sage rats, hawks, eagles, ravens, owls, blue birds, humming birds, and neotropical, migrant song birds also live on or visit the Ranch regularly.

The physical property is unique in that it spans three ecological provinces, which include the flat desert near Brothers to the rolling hills where the headquarters of the Ranch are located to the north boundary of the Ranch, which abuts the U.S. Forest Service land on Maury Mountain.

Trustors raised their children, Becky and Travis, on the Ranch, and the entire family has strong emotional ties to the land. At present, Travis lives and works on the Ranch.

Trustors and their children unanimously agree that land stewardship is important and they agree to take care of the land and to keep the Ranch in tact as a grazing operation and to prevent partitioning and development of the Ranch in perpetuity. The Hatfield family has a historical, land ethic, which includes the belief that production of ruminant animals, done in harmony with nature, has an ecological as well as an economic benefit. Holding the Ranch in perpetuity would provide future generations with an opportunity to connect with the land and to understand and appreciate the family’s historical, land ethic, while eliminating the potential for greed or a sense of personal entitlement. The current ranching operations on the Ranch provide a sustainable livelihood for one to two families. In addition to continuing the ranching operations, if one of Trustors’ children or their issue desire to operate a for-profit operation on the Ranch, which is

Page 1. PERPETUAL LAND TRUST AGREEMENT

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complimentary to the existing ranching operations, then subject to the approval of the Committee of Trustees, such an operation should not only be permitted but also encouraged.

Article 1

Trust Property and Name of Trust

Trustors hereby transfer to the Committee of Trustees the property listed on attached Schedule A, as the original trust estate. Additional property may be added to the trust estate at any time by any person, by testamentary transfer, by insurance contract, trust designation or, with the consent of the Trustee, by inter vivos transfer. All such original and additional property is referred to herein collectively as the "trust estate."

The trust may be referred to as the "**Hatfield/Hyde Land Trust**."

Article 2

Irrevocability

Trustors realize that the right may be reserved allowing Trustors to revoke or amend this trust. Nevertheless, Trustors hereby expressly waive any and all rights to revoke, alter, amend or terminate this trust, and it is declared to be irrevocable and not subject to alteration, amendment or termination, with the exception of the limited power of the Independent Trustee under paragraph DD of Article 10 below.

Article 3

Beneficiaries

Trustors have two children, namely: **BECKY W. HATFIELD-HYDE** and **TRAVIS C. HATFIELD**. This trust is for the benefit of Trustors' children and their issue, whether born or adopted before or after the date of this Agreement. Subject to the provisions in paragraph A of Article 5 below, **CONNIE M. HATFIELD** is also a beneficiary of the Trust.

Article 4

Permitted Uses

Trustors reserve for their issue, the right to reside on the Ranch and to pursue for profit activities on the Ranch which are consistent with the land conservation, wildlife habitat, and continued grazing and ranching purposes, articulated in the Preamble, including but not limited to the following:

Grazing of domestic livestock and operation of ranching business on the Ranch, in a manner consistent with the grazing and cattle operations existing on the Ranch during Trustors' lifetimes.

Protection of existing wildlife habitat, while allowing for habitat restoration and enhancement.

Retention of existing recreational uses, including but not limited to hiking, bird watching, and trail riding excursions, and allowance of improvements commensurate with those uses, provided such uses and improvements are consistent with the permitted uses described in paragraphs A and B above.

D. Provision of natural study and ecological education programs, including but not limited to overnight camping on the Ranch.

Alternative energy generation, including but not limited to solar and wind power installation projects.

To the extent that two or more permitted uses of the Ranch are incompatible, the Committee of Trustees shall have the sole and absolute discretion to resolve the conflict, but grazing and ranching uses shall take precedence and priority over any incompatible permitted use.

Article 5

Dispositive Provisions

The Committee of Trustees shall hold the trust estate and shall administer the same in accordance with the following provisions:

A. Division into Separate Trusts. The Committee of Trustees shall divide and allocate the assets and property contributed to the Trust into separate trusts as follows:

Any assets or property contributed to the trust by gift or other transfer made during the lifetime of an individual ("Transferor") or by bequest or other transfer made at the death of a Transferor shall be allocated to a separate trust to be held in trust for the benefit of all the beneficiaries of this Trust except the Transferor shall not be a beneficiary of any separate trust to which assets or property of that Transferor have been contributed.

The income and principal of each separate trust shall be held, administered and distributed as set forth in the remainder of this Article 5.

B. Distributions. Except as otherwise set forth in this Agreement, the Member Trustees, acting as a Committee of Trustees, as defined in Article 8 below, shall be vested with the sole authority to make distributions of income and principal. Except for the distributions of net income and principal authorized in subparagraphs (1) through (4) below, and discretionary distributions which may only be made by the Independent Trustee under the terms and provisions of this Agreement, until final distribution of the trust estate, no distribution of income or principal of the trust estate or any separate trust established herein shall be made by the Committee of Trustees to any of the beneficiaries.

(1) **Education.** The Committee of Trustees may, in the Committee of Trustees' sole and absolute discretion, make distributions of net income or principal to or for the benefit of a beneficiary for the purpose of completing his or her education (including primary or secondary schooling, vocational or technical training, education at a university or other educational institution at the undergraduate or more advanced level, and travel that the Committee of Trustees considers to have educational value).

(2) **Business Purpose.** The Committee of Trustees may, in the Committee of Trustees' sole and absolute discretion, make distributions of net income and principal to assist a beneficiary in establishing a business, which operates on the Ranch and which is complimentary to the existing ranching operations, and which the Committee of Trustees believes to have a reasonable probability of success.

(3) **Net Income.** Subject to the provisions in subparagraphs (1) and (2) above, the Committee of Trustees, may, in the Committee of Trustees' sole and absolute discretion, make distributions of net income, including income arising from alternative energy contracts including wind or solar power generation contracts, held by the trust or any corporation, limited liability company, limited partnership or other entity in which the trust holds stock or any other interest, to or for the benefit of a beneficiary for such beneficiary's health, education, maintenance, and support; provided, however, no distributions of net income may be made to any beneficiary who is a Transferor; provided further, no distributions shall be made to a beneficiary who has failed to pursue his or her education as described in subparagraph (1) above.

(4) **Charitable Contributions.** The Committee of Trustees may, in the Committee of Trustees' sole and absolute discretion, make distributions of income to a charitable organization described in one or more of §§ 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Internal Revenue Code.

Addition to Principal. Any income not expended shall be accumulated and added to principal.

C. **Termination.** Upon the death of Trustors' last-living issue, and if no other distribution is provided for herein, this trust shall terminate, and the Independent Trustee shall make final distribution of the trust and each separate trust established herein to the following charitable beneficiary to be used for its general charitable purposes: **HIGH DESERT MUSEUM**, located in Bend, Oregon. If the **HIGH DESERT MUSEUM** is not then in existence at the time distribution under this paragraph is directed, the Independent Trustee shall make final distribution of the trust and each separate trust to the **CONFEDERATED TRIBES OF WARM SPRINGS**. If the **CONFEDERATED TRIBES OF WARM SPRINGS** are not then in existence at the time distribution under this paragraph is directed, the Independent Trustee shall select and make distribution to an alternate organization. The alternate organization selected by the Independent Trustee shall be organized for the same or similar charitable purpose to accomplish those goals for which the **HIGH DESERT MUSEUM** was organized on the date Trustors executed this Agreement.

Article 6

Overriding Tax Purposes

In addition to the purposes articulated above, Trustors also intend to achieve the tax purposes outlined in this Article 6, and all provisions of this trust shall be construed so as best to effect these tax purposes. The Committee of Trustees and the Independent Trustee shall not exercise any discretion in a manner that may reasonably be expected to frustrate the accomplishment of any of these purposes.

A. **Completed Gifts**. To the extent applicable, all gifts made to this trust shall be complete gifts of present interests for federal gift tax purposes.

B. **GST Annual Exclusion**. To the extent applicable, contributions to this trust shall qualify for the annual exclusion from the federal tax on generation-skipping transfers under Section 2642(c) of the Code.

C. **GST Exemption**. To the extent applicable, the Independent Trustee shall have absolute discretion to allocate all, some, or none of either Trustors' available generation-skipping transfer tax ("GST") exemption under Section 2631(a) of the Code, or any analogous provisions of the Code related to GST exemption, to any Trustor contributions to this trust. It is Trustors' intention that distributions from this trust be exempt from GST to the greatest extent possible. If there is no GST exemption available at the time a contribution is made to the trust, the Independent Trustee shall take all steps necessary to allocate any GST exemption made available by reason of retroactive legislation or a late filed allocation.

D. **Estate Tax Exclusion**. The assets of this trust shall be excluded from Trustors' gross estate for federal estate tax purposes.

E. **Income Taxation**. This trust shall be a separate taxpayer for federal income tax purposes. At no time shall this trust be deemed to be owned by Trustors for federal income tax purposes.

Article 7

Special Limitations and Powers

The following provisions shall apply only during Trustors' lifetime:

A. **Limitation on Powers**. Notwithstanding anything herein contained to the contrary, except paragraph B below:

No powers enumerated herein or accorded to trustees generally pursuant to law shall be construed to enable Trustors, the Committee of Trustees, the Independent Trustee, or any other person to purchase, exchange, or otherwise deal with or dispose of all or any part of the principal or income of the trust for less than adequate consideration in money or money's worth, or to enable Trustors to borrow all or any part of the corpus or income of the trust, directly or

indirectly, without adequate interest or security; provided, however, under no circumstances shall the real property and ranch lands identified on Schedule A be purchased, exchanged, borrowed, or otherwise disposed of, regardless of the adequacy of consideration, interest, or security.

No person, other than the Committee of Trustees as herein provided, shall have or exercise the power to vote or direct the voting of any stock or other securities of the trust, to control the investment of the trust either by directing investments or reinvestments or by vetoing proposed investments or reinvestments, or to reacquire or exchange any property of the trust by substituting other property.

No distributions of principal or income shall be made to or for the beneficiary which would defray a Trustor's legal obligations including, but not limited to, the obligations of support and maintenance.

B. Interim Withdrawals and Powers of Appointment. The following provisions apply to Trustors' children and to their issue (each as "beneficiary"):

The Committee of Trustees shall, within 10 days following the date of any contribution or deemed contribution to the Trust by Trustors or any other person or entity, notify in writing each beneficiary of such contribution. Thereafter, for a period of 30 days following the date of the Committee of Trustees' written notice to the beneficiary of any contribution to the Trust by Trustors or any other person or entity, each then living beneficiary shall have the right to withdraw from any part of the Trust (including, but not limited to, the actual contribution) during said 30-day period an amount specified by the Transferor of the contribution or, if no amount is specified, an amount equal to his or her pro rata share which shall be determined in accordance with the principle of representation under Article 12, as if Trustors' deaths had occurred.

Withdrawals shall be by written request delivered to the Committee of Trustees. Each beneficiary having the right of withdrawal may waive that right by a written election to not withdraw his or her share of such contribution. In order to be effective, any such waiver shall be irrevocable and unqualified and shall be executed personally by the beneficiary or, if the beneficiary is disabled, then by said beneficiary's legal or natural guardian.

If the beneficiary is under a legal disability during part or all of a withdrawal period, the guardian of the beneficiary may exercise such withdrawal on the beneficiary's behalf.

Each time the beneficiary acquires a right of withdrawal as above provided, the Committee of Trustees shall so notify the beneficiary or the beneficiary's guardian.

If the withdrawal right is not exercised then it shall lapse with respect to the particular contribution giving rise to said withdrawal right.

Article 8

Committee of Trustees

A. **In General.** Except for the powers which may only be exercised by the Independent Trustee under this Agreement, all trustee powers under this trust shall be exercised by a Committee of Trustees (the "Committee of Trustees") acting in the manner set forth in this Agreement. The initial Committee of Trustees is hereby appointed by Trustors and shall consist of the following three (3) persons who shall serve for the initial term set forth by their respective names:

Name	Trustee Term
Connie M. Hatfield	6 year term ending 12/31/2016
Travis C. Hatfield	4 year term ending 12/31/2014
Becky W. Hatfield-Hyde	2 year term ending 12/31/2012

The number of member Trustees (referred to throughout this Agreement as a "Member Trustee") serving on the Committee of Trustees shall not be less than three (3) and no more than five (5). When the term of a Member Trustee of the Committee of Trustees expires, the position of a Member Trustee whose term has expired will thereafter be for a 6 year term and will be filled by holding an election on December 1st of the year the term is ending to fill the position of the Member Trustee whose term is ending. Member Trustees shall hold their position until their successors are duly elected, qualified and accept appointment to serve. Only a beneficiary who has attained the age of 18 ("adult beneficiary") of this trust who is not an incapacitated person will be eligible to vote to fill the position of a Member Trustee whose term is ending. A Member Trustee need not be a beneficiary of this trust. The election of a Member Trustee shall be by instant runoff voting and the election procedure shall follow the procedure set forth in this Article 8.

B. **Election.** Any vacancy occurring on the Committee of Trustees may be filled by the affirmative vote of a majority of the adult beneficiaries. Adult beneficiaries may vote by mail, telegram, electronic mail or facsimile transmission but to be counted all votes must be received by the person directed by the Committee of Trustees to conduct the election by no later than 12:00 Midnight Mountain Standard Time on December 1st of the year the term of the Member Trustee is ending (the "date of the election") unless the Committee of Trustees sets some other deadline for votes to be received.

C. **Contact Information.** It will be the responsibility of each adult beneficiary to notify the Committee of Trustees in writing of any change in the address, e-mail address or fax number of that beneficiary.

D. Removal. A Member Trustee may be removed with cause by a written instrument signed by at least a majority of the adult beneficiaries of this Trust (not including the Member Trustee who is being removed) who are not incapacitated persons. For purposes of this paragraph, “cause” shall include the following:

Substantial failure by a Member Trustee to abide by the terms of this Agreement as reasonably determined by the Committee of Trustees;

(2) A Member Trustee’s material breach of or failure to perform a Member Trustee’s obligations in accordance with the terms and conditions of this Agreement;

(3) A Member Trustee’s death or incapacity as defined in Article 12 below;

(4) A Member Trustee’s commission of a felony or any other act abhorrent to the community which a reasonable person would consider materially damaging to the reputation or business of the Trust and the Committee of Trustees or its successors or assigns; or

(5) Insolvency of a Member Trustee, the making of an assignment for the benefit of a Member Trustee’s creditors, or the filing by a Member Trustee or a Member Trustee’s creditors of a petition in bankruptcy concerning a Member Trustee’s estate.

E. Resignation. A Member Trustee may resign the trusteeship at any time. Any resignation shall be in writing delivered to the Committee of Trustees and shall become effective only upon written acceptance of the trusteeship by a replacement Member Trustee.

F. Meetings. Meetings of the Committee of Trustees may be called by any Member Trustee, and will be held at the time and place fixed by the Member Trustee calling the meeting. The Committee of Trustees may hold and Member Trustees may participate in a meeting by means of conference telephone or similar communications equipment by means of which all Member Trustees participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting. Written notice stating the time, place and purpose of a meeting of the Committee of Trustees will be delivered either personally, or by mail, telegram, electronic mail or facsimile transmission at the direction of the Member Trustee calling the meeting to each Member Trustee at least five (5) days before the day of the meeting. If mailed, electronically mailed, faxed or telegraphed, a notice is deemed delivered when deposited, postage or charges prepaid, with the transmitting agency, addressed to the Member Trustee.

G. Quorum. A majority of the number of the Member Trustees constituting the Committee of Trustees will constitute a quorum at meetings of the Committee of Trustees. Meetings of the Committee of Trustees may be held by conference telephone or by any other means of communication by which all participants can hear each other simultaneously during the meeting, and such participation shall constitute presence in person at the meeting. A quorum once attained continues until adjournment despite voluntary withdrawal of enough Member Trustees to leave less than a quorum. The act of a majority of the Member Trustees present at a meeting at which a quorum is present will be the act of the Committee of Trustees. Except for

the powers which may only be exercised by an Independent Trustee, the Committee of Trustees will manage the business and affairs of the trust and any trust created under this Agreement, and the Committee of Trustees may act only as a Committee of Trustees with each Member Trustee having one vote. Except for the powers which may only be exercised by an Independent Trustee, no Member Trustee shall have the power to act alone. In the event, a majority of the Member Trustees present at a meeting at which a quorum is present are unable to act on any issue before the Committee of Trustees because of a deadlock in the vote, the Independent Trustee will be entitled to vote to break a deadlock between the Committee of Trustees. The Independent Trustee need not be present at the meeting to vote to break a deadlock; but shall vote on the issue upon certification in writing by the Committee of Trustees that the Committee of Trustees is deadlocked on that issue.

H. Action by Written Consent. Any action required or permitted to be taken at a meeting of the Committee of Trustees or by the adult beneficiaries may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the Member Trustees of the Committee of Trustees entitled to vote with respect to the subject matter thereof, or by all the adult beneficiaries, as the case may be.

Article 9

Independent Trustee

A. Appointment. The Trustor hereby appoints **KURT SOLAY** as an independent Trustee (the "Independent Trustee"). In the event **KURT SOLAY** fails or refuses to serve, resigns, is removed, disqualified or is unable to serve, then a majority of the Member Trustees of the Committee of Trustees shall appoint, by an instrument in writing, a successor Independent Trustee. The successor Independent Trustee may be appointed from either individuals or from among corporate fiduciaries qualified to act under the laws of any state of the United States.

B. Powers. The Independent Trustee shall have only the powers and authority specifically granted to an Independent Trustee under this Agreement.

C. Removal. A majority of the Member Trustees of the Committee of Trustees may remove or cause the removal of an Independent Trustee by execution and delivery of an instrument in writing removing the Independent Trustee. If an Independent Trustee is removed, a majority of the Member Trustees of the Committee of Trustees, shall appoint a successor Independent Trustee at any time thereafter by an instrument in writing.

D. Resignation. The Independent Trustee and any successor Independent Trustee at any time and without leave of court, may resign as Independent Trustee of this trust by giving thirty (30) days written notice addressed to the Committee of Trustees, to all adult beneficiaries and to the guardians, conservators, or other fiduciaries of the estates of any beneficiaries under legal disability or if none appointed then to an appropriate person designated by the Committee of Trustees to receive such written notice on behalf of a beneficiary under legal disability. Any resignation of the Independent Trustee shall not be effective until such time as a successor Independent Trustee accepts appointment as Independent Trustee.

E. **Transfer to Successor Independent Trustee.** In the event an Independent Trustee fails or refuses to serve, resigns, is disqualified, is removed as Independent Trustee or is unable to serve (collectively the "resigning Independent Trustee"), the resigning Independent Trustee shall transfer and deliver to the successor Independent Trustee any and all trust assets and records in the possession of the resigning Independent Trustee. Upon transfer and delivery of such assets and records as set forth above, the resigning Independent Trustee shall be discharged as Independent Trustee of the trust and shall have no further powers, discretions, rights, obligations or duties with reference to the trust estate other than for fraud, embezzlement or gross negligence. All such powers, discretions, rights, obligations, and duties of the resigning Independent Trustee shall inure to and be binding upon the successor Independent Trustee. No Independent Trustee shall be liable for the act or omission of any previous Independent Trustee.

Article 10

Trustee's Powers, Successors and Accounting

A. **Trustee's Powers.** The Committee of Trustees is empowered to do all things appropriate for the orderly administration of the trust estate subject to the Committee of Trustees' power and control, unless otherwise specifically provided herein, which powers shall include those granted to trustees pursuant to the South Dakota Trustees' Powers Act, SDCL 55-1A, as now existing or as may be amended in the future, such powers being in addition to and not in limitation of all other common law and statutory powers of trustees. The Committee of Trustees shall have the following powers and discretion which the Committee of Trustees shall exercise in such manner and upon such terms and conditions as the Committee of Trustees shall deem necessary, desirable or convenient:

B. **Retention of Property.** To retain any property for such period as the Committee of Trustees may deem desirable, whether or not such property is productive of any income and independent of any requirement of diversification.

C. **Additions.** To receive additions to the assets of the trust estate from any source.

D. **Business Participation.** To terminate, continue or participate in the operation of any business enterprise, including farming or ranching, in the form of a corporation, a sole proprietorship or a general or limited partnership, which list is not exclusive, and to effect any form of incorporation, dissolution, liquidation, reorganization or other change in the form of the business enterprise, or to lend money or make a capital contribution to any such business enterprise; provided, however, the power to discontinue cattle ranching business either directly or through an entity held by the trust which conducts a cattle ranching business may be exercised only by written consent of 85% of the adult beneficiaries.

E. **Usage Decision Making.** The Committee of Trustees shall have the sole and absolute discretion, consistent with the permitted uses set forth in Article 4 above, to determine whether and to what extent any beneficiary shall have the right to use, occupy, visit or otherwise make beneficial use of any real property or ranch land which is part of the trust estate or which is a part of any partnership, limited liability company, corporation or any other legal entity owned

by the trust or in which the trust holds a controlling interest. The Committee of Trustees may make rules, regulations and adopt policies from time to time setting forth the extent of the right of a beneficiary to use, occupy, visit or otherwise make beneficial use of any such real property or ranch land. The Committee of Trustees shall have the power to designate or build a communal home on the Ranch to be used as a shared-use facility by beneficiaries and by businesses operating on the Ranch. In addition, the Committee of Trustees shall have the power to authorize additional home sites for the building and residential use by beneficiaries provided the beneficiaries are materially participating in ranching operations or are otherwise engaged in operating a business on the Ranch that is complimentary to the existing ranching operations. All building on the Ranch, including the removal of any trees, vegetation or existing improvements, shall be consistent with Trustors' ecological and sustainable grazing intentions as outlined in this Agreement, shall maintain the rustic and historical character of the Ranch, shall comply with all land use regulations, and shall to the greatest extent possible utilize natural materials. No Member Trustee who is a beneficiary may participate in any decision by the Committee of Trustees to authorize the building and use by that beneficiary of a home site and any such power shall be exercised by the other Member Trustees acting as a Committee of Trustees or if the Committee of Trustees is deadlocked any such power shall be exercised by the Independent Trustee, as provided in paragraph G of Article 8. No beneficiary shall have an ownership interest in any residential, commercial or agricultural building or improvement on the Ranch.

F. Permissible Investments. To invest and reinvest the assets of the trust estate as the Committee of Trustees may determine to be in the best interests of the trust estate without limitation by any law applicable to investments by Trustees. The permitted investments and reinvestments may include securities, such as common or preferred stock, mortgages, notes, subordinated debentures and warrants of any corporation, and any common trust fund administered by a corporate fiduciary, or other property, real or personal, including savings accounts and deposits and interests in mutual or money market funds or investment trusts, annuities and insurance, whether or not such investments are unsecured or of a wasting nature.

G. Dealing with Property. To acquire, grant or dispose of property, including puts, calls and options (including options on stock owned by the estate), for cash or on credit, including maintaining margin accounts with brokers, at public or private sale, upon such terms and conditions as the Committee of Trustees may deem advisable; and to manage, develop, improve, exchange, partition, change the character of, abandon property or any interest therein, or otherwise deal with property; provided, however, with respect to the real property described on Schedule A, the Committee of Trustees is strictly prohibited from selling any part or all of said real property unless done as a property exchange for the purpose of adjusting a boundary line or to facilitate the purchase of an adjoining parcel of real property which improves the overall ecology and sustainable grazing operations of the Ranch. To the extent that the Ranch is conveyed into the trust in a series of transfers over the course of the Trustors' joint lives and/or upon the death of either Trustor, any and all interests in the Ranch shall be added to Schedule A and be subject to the restrictions on sale and lease of such real estate set forth in this paragraph. In the event, the trust, either directly, or through an entity held by the trust, acquires other real estate in the future which the Committee of Trustees determines, in the Committee of Trustees' sole discretion, is not related to the cattle operations conducted by the trust or any entity held by

the trust, the Committee of Trustees will have the power to determine whether any such real estate acquired in the future should be added to Schedule A and be subject to the restrictions on sale and lease of such real estate set forth in this paragraph. Any real estate listed on Schedule B, as it may be amended from time to time by the Committee of Trustees adding real estate to Schedule B, shall not be subject to the restrictions on sale and lease set forth in this paragraph, Trustors request (but do not direct or require) that the Committee of Trustees consider, in the Committee of Trustees' sole discretion, offering the real estate to the adult beneficiaries before selling the real estate to any other person. Nothing herein shall be construed to authorize the Committee of Trustees to sell real estate to adult beneficiaries.

H. Borrowing Authority. To borrow funds from any person, including the Committee of Trustees, guarantee indebtedness, or indemnify others in the name of the trust estate and to secure any such obligation by mortgage, pledge, security interest or other encumbrance, and to renew, extend or modify any such obligation for a term within or extending beyond the administration of the trust estate or the term of any trust; provided, however, at no time shall the Committee of Trustees have any of the powers described in this paragraph H with respect to the real property and ranch lands described on Schedule A. No lender shall be bound to see to or be liable for the application of the proceeds of any obligation, and no Member Trustee shall be personally liable for any obligation.

I. Leasing Authority. To make, renew, or amend for any purpose a lease as lessor or lessee for a term within or beyond the term of the trust estate without option to purchase; subject to the powers of the Manager as provided in Article 11 below.

J. Natural Resources. To enter into any arrangement or agreement, including a lease, pooling or unitization agreement, for exploration, development, operation, conservation and removal of minerals or other natural resources.

K. Voting Rights. To vote a security in person or by general or limited proxy, to participate in or consent to any voting trust, reorganization, dissolution, liquidation, or other action affecting any securities, and to deposit securities with and transfer title to a protective or other committee.

L. Title to Assets. To hold securities and other property in negotiable form or in the name of a nominee (including "street name" of a broker) or by deposit to a clearing corporation, with or without disclosure of the fiduciary relationship, but the fiduciary shall be responsible for the acts of any nominee or clearing corporation in connection with the property.

M. Insurance. To insure the assets of the trust estate against any risk and the fiduciary against liability with respect to third persons.

N. Settlement of Disputes. To pay or contest any debt or claim and to compromise, release and adjust any debt or claim and to submit any matter to arbitration.

O. Payment of Expenses. To pay any taxes, assessments, reasonable compensation of the Committee of Trustees and other expenses incurred in the collection, management, care, protection and conservation of the trust estate.

P. Principal and Income. To allocate items of income or expenditure to either income or principal and to create reserves out of the income, all as provided by law, and to the extent not so provided to allocate or create reserves as the Committee of Trustees in its discretion deems appropriate, and the Committee of Trustees' decision made in good faith with respect thereto shall be binding and conclusive on all persons.

Q. Choose Manner of Making Distribution. To make any distribution in any of the following ways to a beneficiary who is a minor, financially incapable, under legal disability, or considered by the Committee of Trustees to be unable to handle property if paid to him or her directly, without liability to the Committee of Trustees:

Directly to the beneficiary.

To the extent permitted by South Dakota law, to a custodian for that person under the South Dakota Uniform Transfers to Minors Act until the person attains the age of 18 years, at which time the custodianship shall terminate and the custodial property shall be transferred to the beneficiary.

To the beneficiary's guardian, conservator, or any other fiduciary for the beneficiary.

To any person or organization furnishing health care, education, support, or maintenance.

R. Division of Estate. To make any distribution or payment in kind or in cash or partly in kind and partly in cash and to cause any share to be composed of cash, property, or undivided interests in property different in kind from any other share, either pro rata or non pro rata, without regard to differences in the tax basis of such property and without the requirement of making any adjustment of the shares by reason of any action taken pursuant hereto. Any division, allocation, apportionment or valuation of the property to distribute the assets to or among any of the trusts or beneficiaries shall be made by the Committee of Trustees, and the good faith determination of the Committee of Trustees shall be binding and conclusive on all parties.

S. Litigation. To prosecute or defend actions, suits, claims or proceedings for the protection or benefit of the trust estate and the Committee of Trustees in the performance of the Committee of Trustees' duties.

T. Employment of Agents. To employ agents, including attorneys, accountants, investment advisors, custodians, appraisers or others, to advise or assist the Committee of Trustees and to delegate to them fiduciary powers and to indemnify them against liability for positions taken in good faith and with reasonable basis.

U. Investment Transactions. With regard to record keeping for investment transactions, the Committee of Trustees need not provide copies of confirmations or similar

notifications each time a trade or investment transaction occurs, but investment transactions shall be set forth in the Committee of Trustees' periodic accounting, if any.

V. **Repairs and Improvements**. To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

W. **Business Personnel**. To elect or employ directors, officers, employees, partners or agents of any business and to compensate such persons, whether or not any such person is a fiduciary, director, officer, partner or agent of a fiduciary, or a beneficiary of the trust.

X. **Farm or Ranch Property**. To the extent not addressed elsewhere in this Agreement, with respect to farm or ranch property, to participate in and operate any farming (including tree farming) or ranch operation personally, or with hired labor, tenants or sharecroppers; to lease any farm for cash or a share of crops under a lease which permits or precludes the material participation of the Committee of Trustees; to fertilize and improve the soil, to employ conservation practices, and to participate in government programs; and to perform any other acts deemed necessary or desirable to operate the property. In making a decision whether to materially participate in farming or ranch operations, the Committee of Trustees shall consider whether an election should be made or has been made under Code Section 2032A to qualify for special farm-use valuation.

Y. **Ancillary Fiduciaries**. If, for any reason, the Committee of Trustees deems it advantageous to act through an ancillary fiduciary, the Committee of Trustees may designate an ancillary personal representative or trustee, qualified to serve in the jurisdiction where such ancillary fiduciary is to act, and may delegate to such ancillary fiduciary such of the powers granted in this trust as the Committee of Trustees deems advisable, without being chargeable with loss, if any, arising out of such designation or delegation. The Committee of Trustees may specify whether any corporate fiduciary or any person or persons acting in an ancillary capacity hereunder shall serve with or without bond. Except as may be otherwise specifically provided, no ancillary fiduciary need comply with the provisions of any Uniform Trustee's Accounting Act, the Uniform Trust Act, or similar acts in force in any state where the fiduciary may be acting.

Z. **Retention of Closely Held Interest**. To retain any real estate interests, closely held securities or affiliated companies, or business interests, and to sell or dispose of such interests only after careful consideration and after determining that sale or disposition is, in the existing circumstances in the best interests of the trust estate or its beneficiaries, subject to the provisions in paragraph G of this Article 10.

AA. **Combination and Division of Trusts**. The Committee of Trustees may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not materially impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

BB. Deadlock Provision. Unless provided otherwise in this Agreement, the Independent Trustee will have the power to break the tie or other deadlock in any vote or other decision of the Committee of Trustees and the adult beneficiaries by exercising such power in a written instrument delivered to the Committee of Trustees, consistent with the provisions in paragraph G of Article 8.

CC. Termination of Uneconomic Trust. If the Independent Trustee determines, in the Independent Trustee's sole and absolute discretion, that the trust, or any subtrust created hereunder, has become uneconomical to administer due to the high cost of administration relative to the value of the trust property, the Independent Trustee may terminate the trust or trust share and distribute such assets as provided in paragraph C of Article 5.

DD. Limited Power to Amend. The provisions of the trust and any separate trust established herein have been drafted to minimize the imposition of any taxes (including but not limited to income, gift, estate and GST tax) and to assure that the real property and ranch lands described on Schedule A are managed in accordance with Trustors' philosophy and intent as articulated in the Preamble of this Agreement. The Independent Trustee is hereby vested with the limited power to amend this Agreement and the provisions of any separate trust for the purposes of minimizing the imposition of taxes upon the trust and any separate trust established herein and any beneficiary and to assure the real property and ranch lands described on Schedule A continue to be managed in accordance with Trustors' philosophy and intent as articulated in the Preamble of this Agreement. The Independent Trustee is not responsible for reviewing the sufficiency of the tax provisions in this Agreement or the provisions of any separate trust, and is entitled to rely on the opinions of counsel and tax advisers for the trust, the beneficiaries, or advisers of the Independent Trustee's own choosing, for purposes of making decisions relating to tax minimization and planning. In deciding whether and how to exercise the authority granted in this paragraph, the Independent Trustee may take into account efficiencies of administration, generation skipping and other transfer tax considerations, income tax factors affecting the trust and beneficiaries, present and future financial and other objectives of the trust and beneficiaries, Trustors' philosophy and intent as articulated in the Preamble of this Agreement and any other considerations the Independent Trustee may deem appropriate to these decisions. After at least thirty (30) days written notice to the Committee of Trustees, an Independent Trustee shall also have the power to distribute all or any portion of the principal of the trust estate to a new irrevocable trust or trusts created for the benefit of the beneficiaries, if in the sole and absolute discretion of the Independent Trustee, the tax law or other laws, time, or other events have rendered the terms and provisions of this trust unduly burdensome and the intent of Trustors in establishing this trust as articulated in the Preamble becomes no longer achievable because of the passage of time or changes in circumstances whereby continuation of the trust will not fulfill Trustors' purposes and intent as articulated in the Preamble of this Agreement.

EE. Segregation of Property Exempt from Generation-Skipping Tax. If an election is made to exempt any property from a generation-skipping transfer tax, and if any property in the trust is not exempt from generation-skipping tax, the Committee of Trustees may divide any trust (including any tax deferral trust) into two separate parts. The two parts shall represent two fractional shares of the property being divided and shall be held in separate trusts. One part shall be funded with property that is exempt, and the other part shall be funded with

property that is not exempt. If the Committee of Trustees separates the exempt property and the non-exempt property into separate trusts, then to the extent practicable the Committee of Trustees shall make payment of principal as authorized therein from the nonexempt property in trust until that property has been consumed, but since the nonexempt property and the exempt property in trust will be affected by changing conditions, the decision as to the source of any such payments shall rest in the sole discretion of the Committee of Trustees.

FF. Approval of Accounts. Prior to delivering the trust assets to a successor Independent Trustee or Committee of Trustees or to making any partial or complete distribution of principal hereunder (other than a distribution which is made in the exercise of the Committee of Trustees' discretion and does not terminate the trust), the Independent Trustee or the Committee of Trustees may require an approval of the Independent Trustee or Committee of Trustees' accounts and a release and discharge from all beneficiaries having an interest in the distribution, or may require court settlement of such accounts. All of the Independent Trustee's or Committee of Trustees' fees and expenses (including attorney's fees) attributable to court approval of such accounts shall be paid by the trust involved to the extent that the accounts are approved.

GG. Partnerships/Limited Liability Companies. The Committee of Trustees may enter into a partnership agreement or a limited liability company ("L.L.C.") operating agreement with others or accept the assignment of or otherwise acquire, hold and dispose of an interest in a partnership or L.L.C., and in so doing may become either a general or limited partner. In any such case, as to creditors of or claimants against the partnership and as to the other members of the partnership or L.L.C., the liability, if any, of the fiduciary for the debts and other liabilities of the partnership or L.L.C., whether ex contractu, ex delicto or otherwise, shall be limited to the assets of the trust, or so much thereof as may be necessary to discharge the debts and liabilities, but no personal liability shall attach to the Committee of Trustees or to the beneficial owners of the assets of the trust. This power does not exonerate the Committee of Trustees from liability for negligence or other wrongdoing.

HH. Deal with Environmental Matters. Inspect and monitor property to determine compliance with environmental laws, take action to prevent or remedy violations, settle environmental claims, decline to accept property which could result in liability under environmental laws or impair the value of the trust estate, and disclaim any power which could cause the Committee of Trustees to incur personal liability for violation of environmental laws. The Committee of Trustees shall not be liable to any trust beneficiary for any decrease in the value of the trust estate as a result of the foregoing actions.

II. Disclaimer. Disclaim any property, interest in property, or power to which the trust may be entitled; and take all steps required to make the disclaimer effective under state and federal laws, including Section 2518 of the Internal Revenue Code or any successor statute. In deciding whether to disclaim, the Committee of Trustees shall consider the effect of disclaimer on taxes that may be payable, on qualification for government benefits, and on Trustors' existing estate plan.

JJ. Transactions with Related Entities. To employ an affiliate or subsidiary of the Committee of Trustees, if any, as may be engaged in investment advisory or investment management services, to advise and assist the Committee of Trustees in investment matters or to perform the function of investment and portfolio manager with respect to all or portions of the trust estate selected by the Committee of Trustees. The entity so employed by the Committee of Trustees shall perform such ministerial, discretionary, fiduciary and advisory functions as the Committee of Trustees may delegate to it, and the Committee of Trustees shall have unrestricted authority to delegate those functions, notwithstanding any self-dealing considerations which are inherent in the affiliated status of the Committee of Trustees and the entity employed, and to pay from income or principal of the trust estate the reasonable charges and expenses for such services.

KK. Corporate Fiduciary. If any stock of a corporate fiduciary or of any affiliate or successor of a corporate fiduciary shall be included in the assets of the trust estate, the Committee of Trustees shall have full authority in the Committee of Trustees' sole discretion and notwithstanding any regulation or rule of law to the contrary to retain the stock and any increases resulting from stock dividends and stock splits and from the exercise of purchase rights and the purchase of fractional shares needed to round out fractional share holdings that may arise concerning the stock. The fiduciary shall vote the stock either directly or by proxy, except to the extent the fiduciary is prohibited by law from voting the stock, in accordance with the written instructions of the Committee of Trustees, not including any corporate fiduciary or affiliate or successor of a corporate fiduciary serving as a Member Trustee on the Committee of Trustees. In the event there is no eligible beneficiary to give instructions, the Committee of Trustees is authorized to vote the stock in the best interests of the beneficiary(s), in view of the purposes for which the trust was created.

LL. Do Other Acts. Except as otherwise provided in this Agreement, do all acts that might legally be done by an individual in absolute ownership and control of property and which in the Committee of Trustees' judgment are necessary or desirable for the proper and advantageous management of the trust estate.

MM. Accounting. Consistent with the requirements in paragraph J of Article 12, the Committee of Trustees is required to give the income beneficiaries or their guardians or conservators, a statement of account showing all receipts and disbursements of principal and income of the trust estate since the last statement. If the beneficiaries or their guardians or conservators do not object to an accounting within six months, their silence shall be conclusive evidence that all beneficiaries approve of that accounting, and the Committee of Trustees shall be exonerated from all liability for matters disclosed in the accounting. This paragraph shall not, however, authorize a beneficiary to act in conjunction with the Committee of Trustees to alter or amend the terms of this Agreement. When a beneficiary has a guardian of the person but no conservator of his or her estate, the Committee of Trustees may render an accounting to the guardian or conservator of the person.

Article 11

Manager

A. **Appointment of Initial Manager.** CONNIE M. HATFIELD shall serve as the initial Manager. If CONNIE M. HATFIELD dies, resigns or becomes incapacitated, then BECKY HATFIELD-HYDE shall serve as the successor Manager. If BECKY HATFIELD-HYDE dies, resigns, or becomes incapacitated, a manager shall be elected according to the procedures outlined in paragraphs B and C below.

D. **Engagement.** The Committee of Trustees acting at a meeting called for that purpose in accordance with Article 8 hereof or by unanimous written consent as set forth in paragraph H of Article 8, may (but are not required to) engage and designate a Manager to manage the day-to-day business activities of any ranching operation or cattle business held by the trust or any separate trust established herein for such time period and on such terms as the Committee of Trustees shall determine in their absolute discretion. Any such engagement of a Manager by the Committee of Trustees shall be in writing and shall set forth all the terms and provisions of such engagement. A Manager need not be a beneficiary of this trust; provided, however, special consideration shall be given to adult beneficiaries deemed capable of acting as Manager by the Committee of Trustees, in their sole discretion, before any person who is not an adult beneficiary may be engaged as Manager. In the event a Manager resigns or is unable or unwilling to serve as Manager, a new Manager may be selected by the Committee of Trustees engaging and designating a new Manager in the same manner as the original Manager was engaged. If a Manager is appointed and designated in the manner set forth above, the Manager shall have the following powers and duties:

The Manager shall have the power to conduct routine maintenance and repairs on ranch land or real property held by the Trust or any separate trust established herein without seeking prior consultation or approval of the Committee of Trustees.

The Manager shall collect all income, rent and other receipts from the management of ranch land or other real property and shall pay all expenses incurred as a result of the management, operation and maintenance and leasing of ranch land and other real property. Upon the written request of the Committee of Trustees, the Manager will provide an accounting of all income and disbursements received and disbursed by the Manager.

The Manager shall perform such other duties and responsibilities with reference to the management of ranch land and other real property as shall be set forth in the written engagement of the Manager or assigned to the Manager by the Committee of Trustees from time to time.

C. **Absence.** If the Committee of Trustees elects not to appoint a Manager or if at anytime no Manager is then serving, the Committee of Trustees will continue to have all powers to manage ranch land and other real property held by the Trust or any separate trust established herein.

D. Termination. The Committee of Trustees acting at a meeting called for that purpose in accordance with Article 8 or by unanimous written consent as set forth in paragraph H of Article 8, may terminate the Manager at any time by execution and delivery of an instrument in writing terminating the Manager.

Article 12

General Provisions and Definitions

The following provisions and definitions apply to all trusts established under this Agreement unless other paragraphs applying to particular situations explicitly provide otherwise.

A. Definitions.

(1) Beneficiary. The terms “beneficiary” or “beneficiaries” means a person or persons who have a present or future beneficial interest in a trust, whether vested or contingent. All beneficiaries of the trust are the issue of Trustors, with the exception of the contingent beneficiary listed in paragraph C of Article 5 above.

(2) Issue. The term “issue” refers to the adopted as well as the natural child, children, or issue of the parent designated. Distribution to a person’s issue by “right of representation” means a division into shares as determined under South Dakota law as it exists on the date this Agreement is signed.

(3) Incapacitated Person “Incapacitated person” means a person who lacks the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority or other disabling cause and the terms “disability” or “incapacity” shall refer to the state of being an incapacitated person. A person shall be deemed an “incapacitated person” and in a state of “disability” or “incapacity” upon certification in writing by two attending physicians that the person is an “incapacitated person” or is in a state of “disability” or “incapacity.”

B. Damage. To the extent that a beneficiary, or one of their employees, guests, personnel, agents or contractors, damage the Ranch, the beneficiary shall be obligated to restore the Ranch to as good or better condition as existed before the damage at beneficiary’s sole cost and expense with no unreasonable delay.

C. Indemnification. To the fullest extent permitted by applicable law, the beneficiary will defend, indemnify and hold harmless the Committee of Trustees and the Independent Trustee, for, from, and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind whatsoever, whether known or unknown, including but not limited to reasonable attorney fees, resulting from or arising out of any actions or omissions by a beneficiary, or any of a beneficiary’s employees, invitees, guests, personnel, contractors, or agents, under this Agreement.

D. Notice to Trustee. Unless the Committee of Trustees or the Independent Trustee receives actual written notice of the occurrence of an event affecting the beneficial interests in the trust, the Committee of Trustees or the Independent Trustee shall not be liable to any beneficiary for distributions made as though the event had not occurred.

E. Protective Provisions for Third Persons Dealing with Trust. No one dealing with the Committee of Trustees or the Independent Trustee need inquire about the validity of anything the Committee of Trustees or Independent Trustee purports to do, nor to see to the application of any money paid or property transferred to, or upon the order of, the Committee of Trustees or Independent Trustee.

F. Gender and Number. When the context indicates it is reasonable, the masculine, feminine, or neuter gender, and the singular and plural number, shall each include the others. For example, because several trusts may eventually be created under this Agreement, many of the references to the trust estate should be understood to mean the several trust estates.

G. Principal Place of Administration. The principal place of administration of any trust established under this Agreement is the state of South Dakota. The Committee of Trustees shall have the right to change the principal place of administration to another jurisdiction only if done in a writing signed by the Committee of Trustees.

H. Spendthrift. The interest of a beneficiary in the principal or income of this trust shall not be subject to claims of the beneficiary's creditors, or others, or liable to attachment, execution or other process of law, and the beneficiary shall have no right to encumber, hypothecate or alienate any interest in this trust in any manner. The Committee of Trustees may, however, deposit in any bank, designated in writing by the beneficiary to the beneficiary's credit, any income or principal payable to the beneficiary. This spendthrift provision is a material purpose of each trust created by this Agreement. The limitations in this paragraph shall not restrict the exercise of any power of appointment or the right to disclaim. However, no beneficiary shall be entitled, by use of disclaimer, either to accelerate the time when any distribution would otherwise be made to that beneficiary.

I. Trustee Bond and Obligation. No Trustee, including any Member Trustee or Independent Trustee, nominated and appointed either herein or under the procedures prescribed herein, shall be required to post any bond or other security for the faithful performance of any duties in that office. Every Trustee, including any Member Trustee and the Independent Trustee, shall have the obligation of exercising all of its duties and discretions in a fiduciary manner.

J. Trustee Reports. To the extent allowed by law, the provisions of this Agreement shall govern the Committee of Trustees' duty to furnish notice, information, and reports with respect to any trust established under this Agreement. The Committee of Trustees shall notify beneficiaries of the existence of the trust, the identity of the Committee of Trustees and Independent Trustee, a change in the Committee of Trustees and Independent Trustee, and their right to receive Trustee reports. However, the Committee of Trustees shall not be required to notify the beneficiaries in advance of any change in the method or rate of a Member Trustee's or Independent Trustee's compensation. The Committee of Trustees shall maintain accurate

accounts and records and shall render to the adult beneficiaries statements of account of its receipts and disbursements of principal and income at least annually. The Committee of Trustees shall, upon reasonable notice (not to exceed 10 days), allow the beneficiaries inspection of the accounting records of the assets held by the Committee of Trustees. The Committee of Trustees is not required to inform and account to beneficiaries except as otherwise specifically provided herein.

K. Trustee Compensation. For its services, unless otherwise agreed to by the Independent Trustee and Committee of Trustees, an Independent Trustee shall receive compensation in accordance with its standard schedule of charges in effect from time to time. Each Member Trustee serving on the Committee of Trustees shall receive such reasonable compensation as shall be determined by the Committee of Trustees, or if the Committee of Trustees is unable to agree as to reasonable compensation, as determined by the Independent Trustee.

L. Severability. If any provision of a trust shall be invalid or unenforceable, the remaining provisions thereof shall continue to be fully effective.

M. Statutory References. Unless the context clearly requires another construction, each statutory reference in this Agreement shall be construed to refer to the statutory section mentioned, related successor sections and corresponding provisions of any subsequent law, including all amendments.

N. Change in Corporate Fiduciary. If any corporate fiduciary is merged or voluntarily liquidated into or consolidated with another entity having the required fiduciary powers, the successor shall have all powers granted to the original corporate fiduciary.

O. Benefits Solely for Designated Beneficiaries. Trustors intend that all gifts made and all trusts created under this Agreement benefit only the persons they have named or described in this Agreement. Trustors understand that, at the time a beneficiary's marriage or domestic partnership terminates, a court might determine that a gift or trust is for the benefit of the beneficiary's spouse or domestic partner as well as for the beneficiary. Trustors expressly declare that no spouse, former spouse, or domestic partner of any beneficiary contributed to the acquisition of property disposed of under this Agreement, and no such person is the object of our donative intent. Trustors do not intend that any present or future spouse, former spouse, or domestic partner of any beneficiary, particularly of a beneficiary who is a child or other descendant of Trustors, receive any direct or indirect benefit whatsoever from any property in the trust estates. These statements should be considered as clear and convincing evidence of Trustors' intent.

P. Headings. The various clause headings used herein are for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

Q. Governing Law. The validity and construction of this Agreement shall be determined under South Dakota law in effect on the date this Agreement is signed. South

Dakota law shall continue to govern despite a change in the principal place of administration of any trust created under this Agreement. Any questions relating to the administration of this Agreement shall be determined by the law of South Dakota at that time even through the situs of some assets of the Trust or the domicile of the Trustor, a Trustee or beneficiary may at some time or times be elsewhere.

R. Counterparts. This agreement may be executed in any number of counterparts and each shall constitute an original of one and the same instrument.

2013 ODFW OREGON BIG GAME WINTER HABITAT

This document summarizes the Oregon Department of Fish and Wildlife's (Department) criteria and rationale for identifying, categorizing, and mapping big game winter habitat in Oregon.

Content:

1. Overview
 2. Species
 3. General Big Game Habitat Description and Winter Habitat Definition
 4. Other Habitat Definitions Used to Categorize Big Game Winter Habitat per the Department's Fish and Wildlife Habitat Mitigation Policy
 5. Designation of Big Game Winter Range as Habitat Category 2
 6. Identifying and Mapping Big Game Winter Habitat
- Appendix A: ODFW Big Game Winter Habitat Map

1. Overview:

The Department's mission includes managing big game populations at healthy and sustainable levels compatible with the primary uses of the land (ORS 496.012). The Department has no authority to regulate land uses and must rely on a variety of other federal, state and county agencies to address habitat needs and/or concerns. Sustainable habitats for big game populations are considered essential and/or important for their long-term conservation and persistence.

2. Species:

This document addresses one species of deer (mule deer: *Odocoileus hemionus hemionus*), one species of elk (Rocky Mountain elk: *Cervus elaphus nelsoni*), and two subspecies of bighorn sheep (California bighorn sheep: *Ovis canadensis californicus* and Rocky Mountain bighorn sheep *O. canadensis canadensis*). Winter habitats for the four species/subspecies are considered both limited and essential for the long-term conservation of the species and populations.

Other big game species, including black-tailed and white-tailed deer, pronghorns and mountain goats are not addressed in this document.

3. General Big Game Habitat and Winter Habitat:

Generally, big game species need habitat which provides a combination of food, water, and security to survive and reproduce. Abundance, distribution, and connectivity of these habitats are crucial to species survival and may vary seasonally depending on a specific species dependence on migratory or non-migratory behavior to fulfill life history requirements.

Winter Habitat: Winter habitat includes areas identified and mapped as providing essential and limited function and values (e.g. thermal cover, security from predation and harassment, forage quantity, adequate nutritional quality, escape from disturbance, etc.) for certain big

game species from December through April. Winter Habitat includes mapped areas of “Winter Range” use by predominately migratory mule deer and Rocky Mountain elk and mapped areas of “Occupied Habitat” use by predominately non-migratory bighorn sheep use areas from December through April.

4. Other Habitat Definitions Used to Categorize Big Game Winter Habitats per the Department Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0000 through 0025):

Essential Habitat: Any habitat condition or set of habitat conditions which, if diminished in quality or quantity, would result in depletion of a fish and wildlife species.

Habitat: The physical and biological conditions within the geographic range of occurrence of a species, extending over time, which affect the welfare of the species or any sub-population or members of the species.

Important Habitat: Any habitat recognized as a contributor to sustaining fish and wildlife populations on a physiographic province basis over time.

Limited Habitat: An amount of habitat insufficient or barely sufficient to sustain fish and wildlife populations over time.

Physiographic Province: Any of one of the ten major geographical areas within the State of Oregon based on differences in topography, climate, and vegetation as defined in the Oregon Wildlife Diversity Plan (OAR 635-100-0001 through 0040).

5. Designation of Big Game Winter Range as Habitat Category 2:

Definition:

As defined in the ODFW Fish and Wildlife Habitat Mitigation Policy (OAR 635-415-0025(2), “**Habitat Category 2**” is essential habitat for a fish or wildlife species, population, or unique assemblage of species and is limited either on a physiographic province or site-specific basis depending on the individual species, population, or unique assemblage.

Process:

Designating fish or wildlife habitats into the appropriate Habitat Category (1-6) requires answering a sequence of yes or no questions, also known as a dichotomous key, ultimately resulting in a specific habitat categorization based on the relative function and value the habitat provides for the specie(s) and the relative scarcity of the habitat on the landscape. (Figure 1).

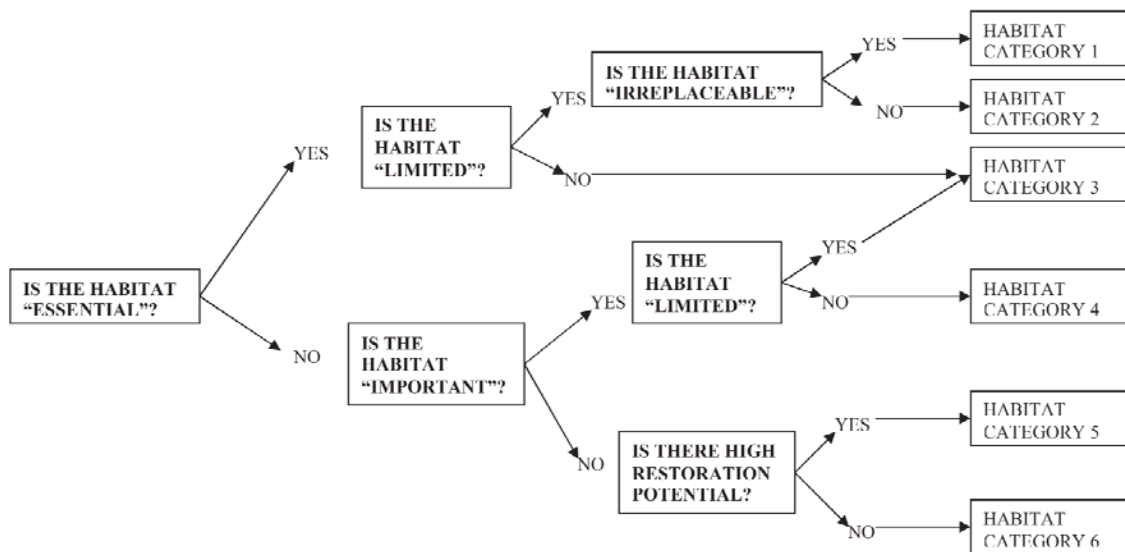


Figure 1. Decision process for identification of habitat function and value relative to habitat category designation.

Step 1: Is the Habitat “Essential”? **Yes.**

“Essential Habitat” means any habitat condition or set of habitat conditions which if diminished in quality or quantity, would result in depletion of a fish or wildlife species.

Winter survival and subsequent reproduction of big game is the primary limiting factor influencing species abundance and distribution in Oregon. Not all winter habitats provide the same functions and values year to year (e.g. thermal cover, security from predation and harassment, forage quantity, adequate nutritional quality, escape from disturbance, etc.) Winter habitats vary in area, elevation, aspect, precipitation, and vegetation association all influencing the relative quantity and quality of available habitat on both an annual and seasonal basis. Factors such as habitat abundance, distribution, and species access to relatively undisturbed winter habitat dictate the specific functions and values winter habitat provides to big game.

Periodic severe winters can result in events of high adult mortality known as “winter die-offs.” Individuals that survive severe winters may not recover adequate body condition or health to successfully reproduce later that spring or become reproductive again the following fall. Specific big game distribution and patterns of essential winter habitat use vary greatly depending on site specific influences. Depending on the year, big game animals may use many portions of their winter range. During severe winters, lower elevation portions of the range may become essential and the only remaining available winter habitat. However, even in mild winters, big game will make seasonal movements up/down slope to take advantage of new plant growth with warmer temperatures at lower elevations, to move out of temporary heavy

snow zones and to move out of areas of heavy mud. In other areas, big game may be required to make daily up/down slope movement between draws providing essential thermal cover and wind-blown ridges which provide the only accessible forage during deeper snow periods.

Step 2: Is the Habitat “Limited”? **Yes.**

“Limited Habitat” means an amount insufficient or barely sufficient to sustain fish and wildlife populations over time.

In areas of increasing land use development and human disturbance, big game have been forced to alter historic patterns and use winter habitats that are less suitable and more fragmented. Many of the highest quality historic big game winter habitats have been converted to cultivated agriculture, housing developments, subdivisions, or fragmented by highways and are no longer suitable for use by wintering big game due to conflict with primary land uses. Remaining available big game habitat is often less functional. This is generally due to lower productivity soils, steeper slopes, and less precipitation, all of which make these areas less suitable for intensive farmed agriculture or other development. However, these lands are frequently important forage areas for private livestock operations, further limiting available forage quality and quantity for big game. Additionally, increasing human disturbance diminishes function and value of habitat for big game. In some areas of Oregon, big game winter habitats occur only within very specific narrow elevation bands between higher snow dominated elevations and lower and dryer elevations incapable of supporting significant forage quantity or quality.

Step 3: Is the Habitat “Irreplaceable”? **No.**

“Irreplaceable” means that successful in-kind habitat mitigation to replace lost habitat quantity and/or quality is not feasible within an acceptable period of time or location, or involves an unacceptable level of risk or uncertainty, depending on the habitat under consideration and the fish and wildlife species or populations that are affected. “Acceptable”, for the purposes of this definition, means in a reasonable time frame to benefit the affected fish and wildlife species.

In some areas, opportunities may exist to successfully mitigate for impacts to big game winter habitats. Restoration of less suitable or degraded existing winter habitats to a functional vegetative condition or allowing wintering big game access to these habitats can increase quality and/or quantity of winter habitats and ultimately, the specific functions and values those habitats provide for the species. Both have been successfully accomplished in the past and can occur within an “acceptable” period of time considering the life history of big game. However, in areas where big game winter habitats are limited due to very specific narrow elevation bands between higher snow dominated elevations and lower and dryer elevations, mitigation should focus in these areas as much as possible.

Cultivated Agriculture: Although some areas of historic big game winter habitat which have been converted to cultivated agriculture could still support wintering big game from a forage quantity and quality perspective, most landowners are unwilling to allow wintering big game to occupy and “damage” cultivated agriculture. Therefore, specific historic big game winter habitat parcels which have been converted to cultivated agriculture should be excluded from habitats otherwise categorized as big game winter habitat Category 2 Habitats and categorized based on functions and values provided to other species using the habitat.

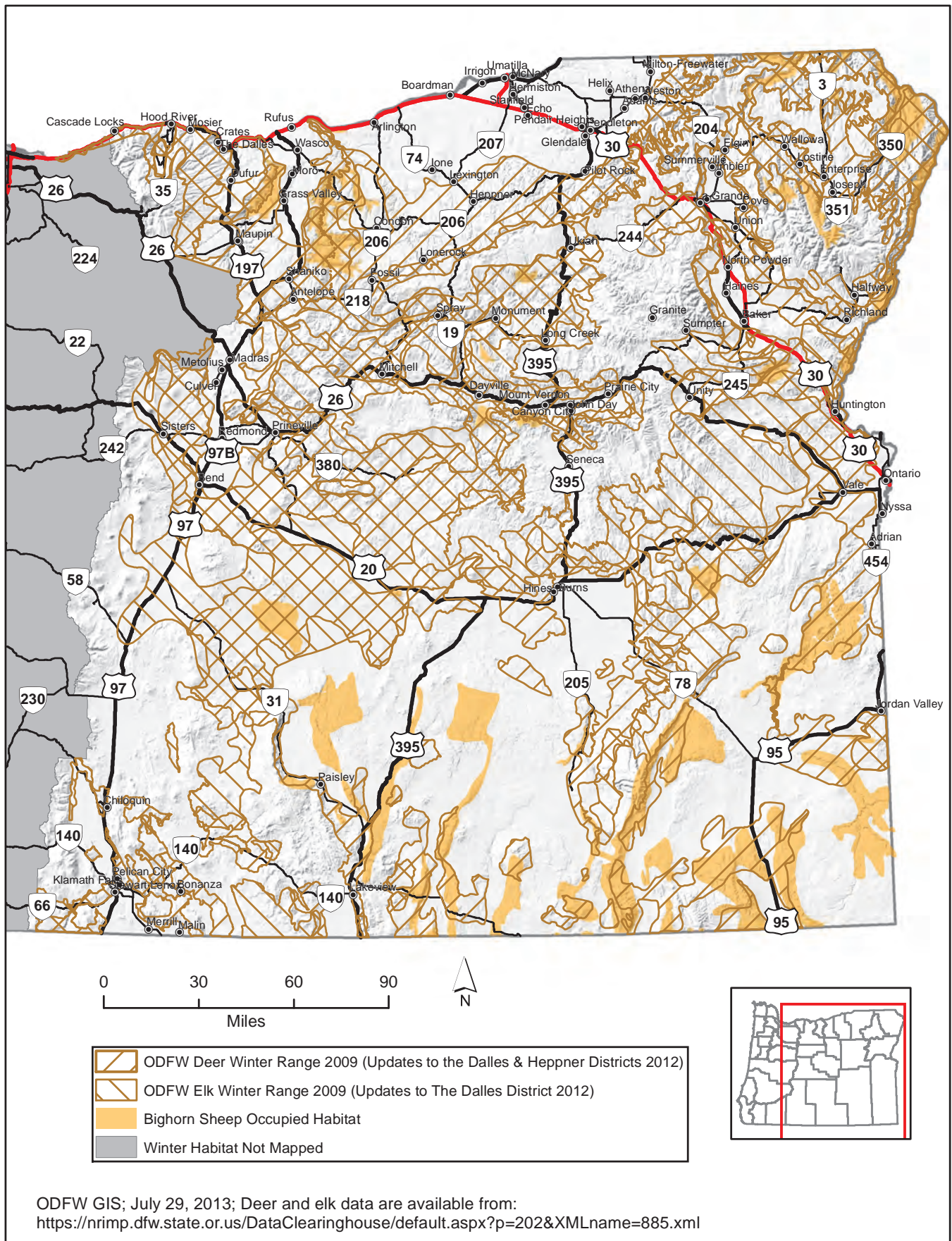
Department Elk De-emphasis Areas: The Department has identified a few Wildlife Management Units as Elk De-emphasis Areas (EDAs). These areas are typified by a very high percentage of private land with extensive areas of agricultural uses that may incur severe damage as elk populations increase or concentrate. In EDAs there is no elk population Management Objective for elk and the primary emphasis is to address property damage. However, winter habitat is important in these areas, because it may still provide an alternative to elk concentrating on lands where they cause property damage. Currently, the two identified EDAs are in the East Beulah Management Unit and in the Columbia Basin Management Units (Columbia Basin, Biggs, and Maupin Management Units).

6. Identifying and Mapping Big Game Winter Habitats:

The Department has iteratively identified and mapped big game winter habitats over the past half a century or more as information has become available, research has been completed, and as observations of big game winter habitat use have been collected. A statewide effort to systematically collect historic and current data as well as analyze and map current winter range habitats for mule deer and Rocky Mountain elk using GIS shape files was completed in 2009 and subsequently updated in 2012 to refine maps for The Lower Deschutes Watershed and add GIS shape files for bighorn sheep occupied habitats (Appendix A).

These mapping efforts included the comprehensive review of both existing internal and external mapped big game winter habitats and incorporated agency research data, observational big game winter use habitat (both air and ground observations), and professional judgment as available for each individual game management unit. Existing mapped big game winter habitats also included incorporation of information from district specific Department big game winter range maps, big game occupied habitat maps, County Land Use Goal 5 winter habitat maps, Western Association of Fish and Wildlife Agencies (WAFWA) Mule Deer Habitats of the West maps, and Rocky Mountain Elk Foundation (RMEF).

ODFW Big Game Winter Habitat: Deer & Elk Winter Range, Bighorn Sheep Occupied Habitat for Eastern Oregon



**MEMORANDUM
OREGON DEPARTMENT OF FISH AND WILDLIFE
DESCHUTES WATERSHED DISTRICT
PRINEVILLE FIELD OFFICE**

Date: December 14, 2021

To: Brent Bybee, Crook County Planning Department

From: Greg Jackle

Subject: **Powell East Wildlife Mitigation Plan review**

The purpose of this memo is to provide initial feedback to NewSun Energy on the *Powell East Solar Farm LLC Wildlife Mitigation Plan*. ODFW has reviewed the document and has provided a word document version our comments included.

To summarize comments, ODFW continues to support option 2 (payment to provide) mitigation to either Deschutes Land Trust (DLT) or to Crook Soil and Water Conservation District through a MOU with Crook County. The mitigation formula likely needs to be re-examined to make sure the costs associated with the restoration work is still realistic and to account for likely inflationary costs if and when this project breaks ground.

ODFW does not feel option 3 is a viable option (agreeing with recent decisions by the Crook County Court and Planning Commission). ODFW also continues to ask for more specific information related to option 1. Without that level of detail, it is not possible to say with certainty that the compensatory mitigation for this project will indeed meet the mitigation goal of no net loss of habitat quantity or quality and provide a net benefit of habitat quantity and quality.

ODFW looks forward to more discussions with NewSun and Crook County to further improve on mitigation options and continue to protect and preserve fish and wildlife habitat in the County.

ODFW Fish & Wildlife Habitat Mitigation Policy Goals and Standards

Habitat Category	Mitigation Goal	Achieved By
Category 1	No loss of habitat quantity or quality	Avoidance
Category 2	No net loss of habitat quantity or quality <u>and</u> to provide a net benefit of habitat quantity or quality	In-kind, in-proximity mitigation
Category 3	No net loss of habitat quantity or quality	In-kind, in-proximity mitigation
Category 4	No net loss of habitat quantity or quality	In-kind or out-of-kind, in-proximity or off-proximity mitigation
Category 5	Net benefit in habitat quantity or quality	Actions that improve habitat conditions
Category 6	Minimize impacts	